

Appendix H. Cable Communications Franchise-- Continental Cablevision of Saint Paul, Inc.*

***Editor's note--**C.F. No. 98-234, § 1, adopted Apr. 29, 1998, amended this appendix in its entirety, in effect repealing former App. H, Arts. I--IV, and enacting similar new provisions in lieu thereof as herein set out. Exhibit A to the ordinance is not set out herein but is on file in the office of the city clerk. Formerly, such provisions derived from Ord. No. 17071, adopted Nov. 10, 1983, as amended by Ord. No. 17239, §§ 1, 3, 4, adopted May 14, 1985; Ord. No. 17382, §§ 1--11, 13, adopted Aug. 5, 1986; C.F. No. 92-1374, §§ 1--29, adopted Sept. 22, 1992; C.F. No. 93-1828, § 1, adopted Mar. 30, 1994; C.F. No. 97-53, § 20, adopted Feb. 12, 1997; and C.F. No. 97-869, §§ 1--5, adopted Aug. 13, 1997.

Cross reference(s)--Cable communications service, Ch. 430.

WHEREAS, The City of Saint Paul has, following reasonable notice, conducted a public hearing affording all persons reasonable opportunity to be heard, which proceeding was concerned with the analysis and consideration of the technical ability, financial condition, legal qualification and general character of Continental Cablevision of St. Paul, Inc. ("CCSP");

WHEREAS, The City of Saint Paul after such consideration, analysis and deliberation has approved and found sufficient the technical ability, financial condition, legal qualification, and character of said CCSP; and

WHEREAS, The said City of Saint Paul has at the said public hearing also considered and analyzed the plans of CCSP for the upgrade of the cable system and found the same to be adequate and feasible in view of the needs and requirements of the entire area to be served by the said system, subject to certain conditions; and

WHEREAS, To the knowledge and belief of the City of Saint Paul this franchise and the procedure used in formulating and awarding the same in all things and in all ways complies with the franchise standards of Minnesota State Law;

NOW, THEREFORE, The City of Saint Paul does ordain that there is hereby created, granted, and established for CCSP a full and complete nonexclusive franchise for a period of ten (10) years, with a five-year extension option, for the construction, operation and maintenance of a cable system within the City of Saint Paul.

Provided, however, that the said franchise shall be subject to the following terms and performance conditions as set forth herein.

ARTICLE I. GRANT OF FRANCHISE AND GENERAL PROVISIONS

Section 100. Title of ordinance.

This ordinance shall be known and may be cited as the "Saint Paul Cable Franchise," hereinafter "franchise," and it shall become a part of the ordinances and Legislative Code of the City of Saint Paul.

Section 101. Definitions.

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. References to officials, departments, agencies or other entities, whether defined or not, shall be read to refer to the same, or their authorized successors. References to statutory provisions shall refer to those provisions as they may be renumbered from time to time. References to applicable law or to any part of the Legislative Code of the City of St. Paul refer to the same as they may be amended from time to time during the term of the

franchise. Words not defined shall be defined as in Chapter 430 of the Legislative Code of the City of St. Paul; if not defined there, as defined in 47 U.S.C. § 521 et. seq.; if not defined there, the words shall be given their common and ordinary meaning.

101.(a). *Basic service* or *basic cable service* shall have the same meaning as the term "basic service" under federal law; except that the basic service shall also be deemed to include any service tier that includes the public, educational and governmental access channels.

101.(b). *Cable service* means:

101.(b).(1). The one-way transmission to subscribers of (A) video programming, or (B) other programming service, and

101.(b).(2). The subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

101.(c). *Cable system* has the same meaning as the term cable system under federal law. In addition, unless the context clearly indicates otherwise, the term cable system in this franchise means CCSP's cable system, and all equipment, facilities and devices appurtenant thereto.

101.(d). *City* is the City of Saint Paul, a Minnesota municipal corporation, as it exists and as its borders may from time to time be changed. Where the franchise requires that an action be taken by the city, that action may be taken by any person authorized to act on the city's behalf.

101.(e). *Company* is CCSP, the grantee of rights under this ordinance awarding a franchise, or its permitted successor, transferee or assignee.

101.(f). *Converter* shall mean an electronic device, which converts signals from cable distribution system frequencies to a form receivable by a television set.

101.(g). *Council* is the city council of the City of Saint Paul.

101.(h). *Easement* shall mean those rights-of-way maintained for the benefit of the public and controlled by the city, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a cable system, its structures or equipment.

101.(i). *[Reserved]*.

101.(j). *Economically disadvantaged* shall mean those persons who receive assistance under any of the following programs: the Minnesota Telephone Assistance Plan ("TAP"); Food Stamps; Minnesota Family Investment Program; General Assistance.

101.(k). *Expanded basic service* for purposes of sections 101(l), 300(g) and 305 means all subscriber services other than basic service provided by the company covered by a regular monthly charge, but not including optional programming offered on a pay-per-channel or pay-per-view basis or usage-sensitive pay basis.

101.(l). *Gross revenues* shall mean all revenue derived directly or indirectly by the company, its affiliates, subsidiaries, parent, and any person in which the company has a financial interest from or in connection with the operation of the cable system to provide cable services. Gross revenues shall include, by way of example and not limitation, revenues from basic service, other cable service tiers, monthly fees for programming offered on a per-channel or per-program basis, installation and reconnection, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, interactive cable service, advertising, cable store sales, late payment service fees and other services offered over the system. Gross revenues shall not include any taxes on services furnished by the company herein imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the company on behalf of said governmental unit. The franchise fee is not such a tax.

101.(m). *Installation* shall mean the connection of the system from feeder cable to subscribers' facilities.

101.(n). *Local* means within the City of St. Paul.

101.(o). *Lockout device* is an optional mechanical or electrical accessory to a subscriber's terminal which, when activated, inhibits the viewing of a certain channel or channels provided by way of the cable system.

101.(p). *Make-ready* shall mean the rearrangement of existing wires on utility poles performed by telephone and electric utility companies to allow for the addition of cable plant on such poles.

101.(q). *Nonprofit institution* means (1) a person, other than a religious organization, which qualifies for federal tax exempt status; and (2) any governmental body, agency, department, or commission; accredited school; library; hospital; or any legal entity contracting with the city to provide social services; whether or not such entity falls within the scope of subdivision (1).

101.(r). *Person* includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, including the city.

101.(s). *Person with disabilities* means any living person that: (1) receives assistance under the Social Security disability insurance program, or the Supplemental Security Income (SSI) disability program; or (2) has been issued an identifying certificate by the State of Minnesota for persons with physical disabilities; or (3) receives any vocational rehabilitation services pursuant to Section 268A.01 of the Minnesota State Statutes.

101.(t). *Public property* is any property owned by the city other than a street or sidewalk.

101.(u). *[Reserved]*.

101.(v). *Senior citizen* means any living person over sixty-five (65).

101.(w). *Sidewalk* shall mean that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including parkways, not on private lands.

101.(x). *Subscriber* means the city, any government entity or any other person who legally receives any cable service delivered over the cable system.

101.(y). *Street* shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive, other easement or rights-of-way now or hereafter held by the city for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the city which shall within their proper use and meaning entitle the city and the company to use thereof for the purpose of installing or transmitting cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a cable system.

101.(z). *User* shall mean any individual, institution, organization, or business that purchases any portion of the company's bandwidth for delivery of programming or services or for receipt of programming or services, or which is entitled to use any portion of the bandwidth at no charge.

101.(aa). *Video channel* shall mean a six (6) MHz band of the electromagnetic spectrum which is capable of carrying at least one (1) video signal.

101.(bb). *Walkout* shall mean the process whereby a cable company and telephone and electric utility companies inspect utility poles throughout the city to determine the amount of make-ready to be performed by the utility companies.

Section 102. Franchise administrator.

The city may from time to time designate an entity to be responsible for the continuing administration of the cable franchise and for the planning and development of cable communications services by providing written notice of the designation to the company. The designee as of the effective date of this franchise shall be the city's cable communications officer. Any action taken by such designee, within the scope of the authority granted by the city, and any notice received from such designee, shall be treated as an action of, or notice by the city.

Section 103. Grant.

The city hereby grants to the company a nonexclusive ten-year cable system franchise as a renewal of the company's existing franchise dated November 10, 1983, as amended, to provide cable service, subject to all the terms and conditions as herein provided. Nothing in this franchise authorizes the company to provide noncable services (other than the services that the company is required to provide for the city or the city's authorized users in connection with the provision of the institutional network). If the company is authorized to provide noncable services, the city may either by separate ordinance or by amendment of this ordinance establish additional conditions or requirements related to the provision of those services or to the use of streets or public property in connection with the provision of noncable services, and no provision in this franchise shall operate as a limitation on the city's authority in this regard. *Provided*, however, nothing herein is intended to grant the city greater rights with respect to franchising telecommunications providers than it has under applicable law, as amended from time to time.

Section 104. Rights and privileges of company.

The franchise granted by the city pursuant to this ordinance shall grant to the company the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets now in existence and as may be created or established during its terms, any poles, wires, cable, antennas, towers, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of its cable system for the provision of cable service in the City of St. Paul on the terms and conditions hereinafter set forth. The franchise is not in lieu of any permit or other requirements that exist or may be established by the city. Permits must be obtained at the time and in the manner the city may specify, and permit conditions must be strictly adhered to. The franchise does not grant the company the right to occupy any particular location upon, along, across, above, over and under the streets; nor does the franchise permit the company to interfere with the use of the streets by others or to occupy other public property.

Section 105. Agreement.

105.(a). The company agrees to be bound by all the terms and conditions contained herein, in the attachments hereto, and in the agreements referenced therein, and by the terms and conditions of the agreement dated April 15, 1998, as if fully set forth.

105.(b). The company also agrees to provide the following broad categories of services, in addition to providing the channels for PEG use:

105.(b).(1). Cable services responsive to the needs and interests of the community throughout the franchise term, as determined through surveys or studies of St. Paul subscribers;

105.(b).(2). Public affairs and news programming about the City of St. Paul;

105.(b).(3). Public affairs and news programming about the Twin Cities region;

105.(b).(4). A channel or channels of children's programming;

105.(b).(5). A channel or channels of arts and cultural programming;

105.(b).(6). A channel or channels of programming of special interest to minority groups.

105.(c). The company agrees that, throughout the term of this franchise, it shall make available at least the percentage of channels it was required to make available for commercial use under 47 U.S.C. § 612 as of the effective date of this agreement. These channels, referred to as "leased access" channels in this franchise, shall be available for lease by any person unaffiliated with the company, or to the city, to provide any services.

Section 106. Term.

106.(a). The term of the franchise to be granted by the city pursuant to this ordinance shall be for a period of ten (10) years from and after the effective date, excluding any

period of time during which the company is enjoined by a court of competent jurisdiction from performing its obligations under the franchise.

106.(b). Notwithstanding the foregoing, the franchise term may be extended for an additional five (5) years by the city acting unilaterally, or upon request of the company, if the city, in its sole discretion, determines that:

106.(b).(1). The public interest would be served thereby; or

106.(b).(2). (A). The company has satisfactorily complied with its obligations hereunder; and

(B). The cable system is meeting the cable-related needs and interests of the community, and the enforceable commitments of the company are such that the cable system is expected to meet the needs and interests of the community over the extension term.

106.(c). References to "franchise term" in this franchise refer to the franchise term and any renewals or extensions thereof.

Section 107. Effective date.

The franchise term shall commence and be in force upon the later of the following:

107.(a). Company's delivery to the city clerk of:

107.(a).(1). A signed acceptance of the franchise;

107.(a).(2). Proof that the insurance, bonds and letters of credit required hereunder have been obtained and are in force;

107.(a).(3). Payment by the company of costs for the publication of this ordinance; and

107.(a).(4). Payment of any amounts due on or before the effective date and provision of any proofs and documents due on or before the effective date.

107.(b). Approval by the city of a certain transaction described more fully in the March 11, 1998, request for approval of a change in the corporate structure of company's ultimate parent, US WEST, Inc. which will result in a separation of US WEST's telephone and cable system operations; provided that, this paragraph shall not apply if the March 11, 1998, request for approval is withdrawn or otherwise materially [changed.]

If the franchise has not become effective prior to July 31, 1998, then the grant of the franchise shall be of no force and effect, and the company shall have no rights hereunder.

Section 108. Area.

This franchise is granted for the entire area of the City of Saint Paul as it exists and as its borders may from time to time be changed. The company shall provide cable service throughout the entire franchise area.

Section 109. Fees, payment of fees and penalties.

109.(a). Throughout the term of this franchise, the company shall pay to the city a franchise fee of five (5) percent of gross revenues. Provided that, the city may at any time increase this fee to the maximum that may be charged consistent with state and federal law, should the federal law limit change or be eliminated. However, the city may not increase the franchise fee except after providing the company ninety (90) days advance written notice, and providing the company the opportunity to comment on the proposed change within that ninety-day period.

109.(b). The following shall not be included in gross revenues for purposes of calculating the franchise fee: Reimbursements received by the company from programmers for the costs actually expended by the company in a temporary joint marketing campaign.

109.(c). Gross revenues shall be reduced by the amount of bad debt expense (using the direct write-off method). For purposes of this section 109(c), the term "bad debt expense" refers to amounts lawfully billed to a customer and owed by the customer for cable service and accrued as revenues on the books of the company, but not collected after reasonable efforts have been made to collect the charges. Bad debt expense, by way of example and not limitation, does not include the amount of discounts, promotions, or credits provided a subscriber that may reduce the amount a subscriber

owes to the company. *Provided*, however that (1) the bad debt expense deduction may not exceed two (2) percent of gross revenues for any quarter; and (2) bad debt expense is again treated as revenue when recovered.

109.(d). The exclusion of the foregoing reimbursements and bad debt expense from the franchise fee calculation shall not be read to suggest that any other reimbursement, similar or dissimilar, should or should not be excluded from the calculation of gross revenues.

109.(e). The parties agree that Internet service shall be treated as a cable service for purposes of this franchise and a franchise fee paid on all revenues therefrom until such time as a court or agency of competent jurisdiction over this franchise rules that the service is not cable service and all appeals from the decision have been exhausted.

109.(f). The franchise fee and any other cost or penalties assessed shall be payable, except as otherwise specified in this franchise agreement, quarterly to the city office of financial services, and the company shall file a complete and accurate verified statement of all gross revenues within the city during the period for which said quarterly payment is made, and said payment for each quarter shall be made to the city not later than forty-five (45) days after the expiration of the quarter when due.

109.(g). In addition to its other rights to review and copy the company's records under other provisions of this franchise or the St. Paul Legislative Code, the city shall have the right to inspect the company's records to determine whether the company has paid the franchise fee owed. The city may, but is not required to, audit such records and to recompute any amounts determined to be payable under this ordinance. The company shall reimburse the city for all expenses incurred by the city in conducting the audit where such audit shows the company's fee payment for any quarter reviewed is five (5) percent or more under the amount found by the city to be due and owing.

109.(h). In the event that any franchise payment or recomputed amount, cost or penalty is not made on or before the applicable dates heretofore specified, interest shall be charged daily from the date of such default or delay at the rate of interest which is the prime rate charged by the First National Bank of the City of Saint Paul for preferred customers as adjusted on the first day of each month for the month in which such default or delay first occurred.

109.(i). The acceptance by the city of any franchise fee payment shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such franchise fee payment be construed as a release of any claim the city may have for additional sums payable.

109.(j). The franchise fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this franchise, or as required by applicable law. By way of example, and not limitation, permit fees and business franchise taxes are not waived and remain applicable.

Section 110. Use of company facilities.

The city shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the company any wires and pole fixtures that do not unreasonably interfere with the cable service operations of the company; provided, however, that the city will hold the company harmless for any damages resulting from the city's negligent installation or use of said wires and/or poles or pole fixtures.

Section 111. Rates.

111.(a). Except to the extent and for the time prohibited by federal law, all of the company's rates and charges are subject to regulation and prior approval by the city.

111.(b). Rates and charges that are subject to regulation shall be reasonable. The company shall maintain a current list of all rates and charges with the cable communications officer. The first list (the "initial rates") shall be filed with the city on or before the effective date of the franchise. Changes in rates and charges require the prior approval of the city, except as federal law otherwise provides. Both initial rates and

subsequent rate changes shall be subject to review and the company may be required to refund excessive rates.

111.(c). Except to the extent the city may not enforce such a requirement, the company is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; *provided, however*, that company may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a nondiscriminatory basis to similar classes of subscribers throughout the franchise area; *provided further* that discounts are permitted for senior citizens, people with disabilities, or the economically disadvantaged and in any case where the company is required to provide a discount, or is expressly entitled to provide a discount under federal law, so long as such discounts are applied in a uniform and consistent manner.

111.(d). Equipment security deposit option and recovery costs:

111.(d).(1). The company reserves the right to charge a deposit for converters or other terminal equipment placed in subscribers' homes.

111.(d).(2). The company reserves the right to charge full replacement, repair and administrative costs for converters or other company-owned equipment which are lost, stolen or damaged through neglect or misuse by the customer, so long as it is not already recovering those charges through other rates.

111.(d).(3). The company reserves the right to refuse service to any subscriber for bona fide credit reasons and may levy reasonable collection charges on overdue or delinquent accounts. *Provided, however*, that a subscriber must be reconnected upon request if the subscriber pays the amount owed to the company, the reconnection fee, and provides any lawfully required deposit.

111.(d).(4). Deposits must be returned within thirty (30) days of the date a subscriber terminates service.

111.(e). The company shall provide at its cost of labor and materials an antenna-cable switch to any subscriber requesting such a switch.

111.(f). Prewiring projects:

111.(f).(1). The owner or builder of a residential or commercial building or other project shall have the right to prewire an entire project for cable service. The company shall connect its cable system to the wiring installed by the owner or builder, so long as the prewired installation uses internal cable wiring that meets or exceeds the company's specifications for installations that the company applied to itself as of the date the project was undertaken.

111.(f).(2). The company shall publish specifications for internal cable wiring, and shall provide a copy of those specifications to any person upon request. A copy of the specifications shall be provided to the cable communications officer on or before the effective date of the franchise, and any change in the specifications must be filed prior to the date the changes go into effect.

111.(f).(3). The owner or builder may request inspection and approval of internal wiring according to a schedule supplied by the company. The company shall inspect and provide technical assistance at its cost upon request.

111.(f).(4). Nothing in this section prohibits the company from refusing to connect to a prewired building if the prewiring causes signal leakage in excess of amounts permitted under applicable law.

111.(g). The company shall offer the greater of a one dollar (\$1.00) per month or ten (10) percent per month discount on basic service for senior citizens, persons with disabilities and persons who are economically disadvantaged. The company shall offer a ten (10) percent discount on other cable services that it offers to senior citizens, persons with disabilities or the economically disadvantaged. The company may require persons who seek to take advantage of the discount to provide reasonable proof that they are eligible for the discount. Age may be proven by presentation of a birth certificate,

passport, or valid, state-issued photo identification card. Proof of eligibility for discount on grounds of economic disadvantage may be shown by any document from an agency or company responsible for any of the programs referenced in section 101(j), showing that person seeking the discount is served by any of the programs described in 101(j). Proof of eligibility for discount on grounds of disability may be shown by any document from an agency or company responsible for any of the programs referenced in section 101(s), showing that person seeking the discount is served by any of the programs described in 101(s), or by presentation of the certificate described in 101(s)(2).

111.(h). Where subscriber network installation as required in Article III, section 305 is made without charge to governmental, educational and nonprofit institutions that include living quarters, the company may charge for all services to individual living units within such building, including, but not limited to, individual student housing units (i.e., dormitory rooms) and hospital rooms. Rooms within fire and police stations are not treated as living quarters for purposes of this section 111(h).

111.(i). Except as federal law requires otherwise, service requests for maintenance or repair of cable facilities are performed at no charge unless such maintenance or repair is required as a result of damage caused by a subscriber.

Section 112. Rate regulation procedures.

112.(a). Pursuant to Saint Paul City Charter, section 16.03, all rates and charges (collectively referred to as "rates") that must be regulated in accordance with regulations established by the federal government shall be regulated by the city in conformity with those applicable regulations, and the procedures set forth in the St. Paul Legislative Code and this agreement. Other rates that are subject to regulation shall be regulated in accordance with the St. Paul Legislative Code and this agreement. To the extent that any provisions of this franchise or of Saint Paul Legislative Code are inconsistent with applicable federal regulations, the federal regulations shall control.

112.(b). An application for a change in rates shall be filed in accordance with procedures established in Saint Paul Legislative Code at least one hundred twenty (120) days prior to a proposed change in the rates, except insofar as federal regulations preempt these requirements. If the city determines, after hearing that the company has failed to show that the rates are justified, or if the city determines that the rates are not justified, it may set the appropriate rate and order refunds of any excess amounts collected from subscribers. For rates existing as of the effective date of the franchise that have not been approved pursuant to FCC procedures, the city reserves the right to require the company to prove that the rates are justified. If the company fails to show that the rates are justified, or the city determines after hearing that the rates are not justified, the city may establish the appropriate rate and order rates reduced accordingly. Final rate orders establishing rates or ordering refunds shall be issued by the city council, and may be adopted by resolution.

112.(c). Should the company decide to raise rates, it shall file its schedule of new rates and the relevant portions of the minutes of the board of directors or executive committee meetings at which such rate increase was discussed.

Section 113. Costs.

Unless expressly provided otherwise, costs associated with the issuance or transfer of, and company's compliance with, this franchise and with applicable law shall be borne by the company, and with no cost to the city. Costs incidental to the awarding of this franchise shall include, but shall not be limited to, all costs incurred by the city, its staff, appointees or elected officials in assessing the need for franchising the cable system. Such costs shall also include, but not be limited to, publications of the franchise and notices prior to any public meeting provided for pursuant to this franchise, and the costs incurred by the city in its study, preparation of applications for the issuance of a franchise to the company or the transfer of the franchise to another person. The company will reimburse the city for costs the city incurs in connection with the foregoing within thirty (30) days after the date a bill of costs is sent to it.

Section 114. Notices.

All notices from the company to the city pursuant to this franchise shall be filed with the city clerk and with the city's cable communications officer. The company shall maintain with the city, throughout the term of this franchise, an address for service of notices by mail. The company shall also maintain with the city a local office and telephone number for the conduct of matters related to this franchise during normal business hours.

Section 115. Letter of credit.

115.(a). Prior to the effective date of its franchise, the company shall deposit with the city a letter of credit from a local financial institution in the amount of one hundred thousand dollars (\$100,000.00). The city must be able to draw upon the letter of credit if it has followed the procedures described below, even if there is a dispute as to whether there has been an act or omission that would entitle the city to call upon the letter of credit. Upon completion of the system upgrade required under Article III (including, by way of example and not limitation, completion of the institutional network upgrade), the company may reduce the letter of credit amount to fifty thousand dollars (\$50,000.00). The form and content of such letter of credit shall be approved by the city attorney. The letter of credit shall be used to insure the faithful performance by the company of all provisions of this franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the city having a jurisdiction over its acts or defaults under this franchise; and the payment by the company of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system.

115.(b). Whenever the city shall receive payment of any amount against the letter of credit pursuant to this section 115, the company shall pay to or deposit with the financial institution with whom it maintains said letter of credit an amount sufficient to replenish the letter of credit to its full value of one hundred thousand dollars (\$100,000.00) if during the period of the system upgrade required under Article III or of fifty thousand dollars (\$50,000.00) if after completion of that system upgrade within ten (10) days after the company has been tendered delivery by registered mail, return receipt requested, of the request for payment. The cable communications officer shall be furnished with written proof of replenishment not later than twenty-four (24) hours after it is accomplished.

115.(c). If the company fails to pay to the city any compensation within the time fixed herein or within this franchise ordinance; or fails, after ten (10) days' notice, to pay to the city any taxes due and unpaid; or fails to repay the city within ten (10) days any damages, costs or expenses which the city is compelled to pay by reason of any act or default of the company in connection with this franchise; or fails, after three (3) days' notice of such failure by the city, to comply with any provision of this franchise which the city reasonably determines can be remedied by demand on the letter of credit, the city may immediately request and receive payment of the amount thereof, with interest and any penalties, from the financial institution holding the letter of credit. Upon such request for payment, the city shall notify the company of the amount and date thereof.

115.(d). The rights reserved to the city with respect to the letter of credit are in addition to all other rights of the city, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the city may have.

115.(e). The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be canceled by the financial institution nor the intention not to renew be stated until thirty (30) days after receipt by the city, by registered mail, of a written notice of such intention to cancel or not to renew."

115.(f). Neither withdrawal of money by the city pursuant to this provision nor wording contained herein shall be construed as a limitation of the company's right to contest penalties under Saint Paul Legislative Code, section 430.037.

Section 116. Bonds.

116.(a). At the time this franchise becomes effective pursuant to Article I, section 107 of this franchise ordinance, the company shall file with the city clerk and shall maintain during the system upgrade required by Article III the following bonds:

116.(a).(1). A labor and material payment bond in the sum of one million dollars (\$1,000,000.00).

116.(a).(2). A faithful performance bond running to the city in the penal sum of one million dollars (\$1,000,000.00) conditioned upon the faithful performance of the company of all the terms and conditions of this franchise and upon the further condition that, in the event the company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the city as a result, including the full amount of any compensation, indemnification or costs of removal or abandonment of property of the company, plus costs and reasonable attorney's fees up to the full amount of the bond.

116.(b). Following the satisfactory completion of all construction required by Article III (including, by way of example and not limitation, completion of the institutional network upgrade), the initial construction bond shall be released, assuming there are no outstanding defaults. The company shall file with the city clerk and maintain throughout the term of this franchise a labor and material payment bond in the amount of five hundred thousand dollars (\$500,000.00). The city may require the company to increase the amount of this bond if the city concludes that it is necessary to do so given the amount of construction being performed by the company, or based upon the harm being caused by the company to streets or public or private property.

116.(c). Following the completion of the upgrade required by Article III and until such time as the company has liquidated all of its obligations with the city, the company shall file with the city clerk and maintain throughout the term of this agreement a faithful performance bond running to the city in the penal sum of five hundred thousand dollars (\$500,000.00) conditioned upon the faithful performance of the company of all the terms and conditions of this franchise and upon the further condition that, in the event the company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the city as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property of the company plus costs and reasonable attorney's fees up to the full amount of the bond.

116.(d). The bonds shall be subject to the approval of the city attorney and shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled until sixty (60) days after receipt by the city attorney, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

116.(e). The rights reserved by the city with respect to the bonds herein are in addition to all other rights and remedies the city may have under this franchise or any other law.

Section 117. Liability and insurance.

117.(a). The company agrees by the acceptance of this franchise to indemnify, keep and save the city free and harmless from liability on account of injuries or damage to persons or property arising out of the construction, maintenance, repair and operation of its cable system. In the event that suit shall be brought or that recourse or damages shall be sought against the city either independently or jointly with the company on account thereof, the company upon notice by the city shall defend the city in any such suit or action at the cost of the company, and in the event of final judgment being obtained against the city either independently or jointly with the company, the company shall indemnify the city and pay such judgment with all costs and hold the city harmless therefrom.

117.(b). The company shall pay and by its acceptance of the franchise specifically agrees that it will pay all additional expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in subsection a. above. These additional expenses shall include, but not be limited to, fees for outside attorneys and special consultants.

117.(c). The company shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the city and the company with regard to all damages mentioned in subsection 117(a). in the minimum amount of:

117.(c).(1). Five hundred thousand dollars (\$500,000.00) for property damage to any one (1) person;

117.(c).(2). Two million dollars (\$2,000,000.00) for property damage in any one (1) accident;

117.(c).(3). One million dollars (\$1,000,000.00) for personal injury to any one (1) person; and

117.(c).(4). Two million dollars (\$2,000,000.00) for personal injury in any one (1) accident.

117.(d). The insurance policy obtained by the company in compliance with this section must be approved by the city attorney and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the city clerk during the term of the franchise, and may be changed from time to time to reflect rising liability limits. The company shall immediately in writing advise the city attorney of any litigation that may develop that would affect this insurance.

117.(e). Neither the provisions of this section or any damages recovered by the city thereunder shall be construed to or shall limit the liability of the company under its franchise for damages.

117.(f). All insurance policies maintained pursuant to this franchise shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the city, by registered mail, of written notice of such intention to cancel or not to renew."

117.(g). Nothing in this section shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the company's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

117.(h). For purposes of this Article I, section 117, the term "city" includes the City of St. Paul, its elected officials, officers, boards (including the board of water commissioners), commissions or employees.

Section 118. Indemnification.

118.(a). The company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the city, its elected officials, officers, boards (including the board of water commissioners), commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including, but not limited to, reasonable expenses for outside legal fees and disbursements and liabilities assumed by the city in connection therewith):

118.(a).(1). To persons or property, in any way arising out of or through the acts or omissions of the company, its servants, agents or employees or to which the company's negligence shall in any way contribute;

118.(a).(2). Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm

or corporation (excluding claims arising out of or relating to city or access programming);

118.(a).(3). Arising out of company's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the company in its business hereunder;

118.(a).(4). Arising out of any claim wherein damages or any other relief is sought as a result of the city's cable communications franchising procedure or as a result of the awarding of the cable communications franchise, or as a result of the city's failure to award the franchise to any other person, partnership, corporation or other legal entity. The indemnification provided for herein shall not extend or apply to any acts of the city constituting a violation or breach by the city of the contractual provisions of the franchise ordinance, unless such acts are a result of the order of a court or administrative agency or are caused by the act or acts of company; and

118.(b). In the event that the city awards any additional cable communications franchise in any future franchise process to a firm other than the company, then the company agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the city, its officials, officers, boards (including the board of water commissioners), commissions, employees or agents, for any award of a franchise made in conformity with applicable state and federal law.

118.(c). The cost and expense covered by the indemnities shall include, but not be limited to, fees for outside attorneys and special consultants.

118.(d). The city shall give company reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. The company shall cooperate with the city in the defense of any such action, suit or other proceeding at the request of the city; however, in the absence of such request, nothing herein shall be deemed to prevent the company from cooperating with the city and participating in the defense of any litigation by its own counsel at the company's cost and expense.

118.(e). No recovery by the city of any sum by reason of the letter of credit required in Article I, section 116 shall be construed as any limitation upon the liability of the company to the city under the terms of this section, except that any sum so received by the city shall be deducted from any recovery for the same damages which the city might have against the company under the terms of this section. The provisions of this section shall not be dependent or conditioned upon the validity of this ordinance or the validity of any of the procedures or agreements involved in the award or acceptance of the franchise, but shall be and remain a binding obligation of the city and company even if this ordinance, any part hereof, or grant of the franchise is declared null and void in a legal or administrative proceeding. It is expressly the intent of the company and the city that the provisions of this section shall survive any such declaration and shall be a binding obligation of and shall inure to the benefit of the company and city and their successors and assigns, if any.

118.(f). It is the purpose of this section to provide maximum indemnification to the city under the terms set out herein and, in the event of a dispute as to this section, it shall be construed to the greatest extent permitted by law to provide for the indemnification of the city by the company.

118.(g). Notwithstanding section 117(g), to the extent permitted by law, the company shall have no monetary recourse whatsoever against the city for any loss, costs, expenses, or damages arising out of any provision or requirement of this franchise, or Chapter 430 because of the enforcement of this franchise or Chapter 430, or any action taken pursuant thereto, including damages that may be caused by movement or removal of the cable system during emergencies or in the course of any other activity of the city in the public streets or on public property, except in cases where the damage is the result of the city's gross negligence or willful misconduct. In no event shall the city

be liable to the company for any losses resulting from the interruption of its business, or for any other consequential damages, punitive damages or exemplary damages. The rights of the city under this section 118(f) are in addition to, and shall not be read to limit, any immunities the city may have under federal or state law or other provisions of this agreement.

Section 119. Service of process and consent to jurisdiction.

The company shall designate an agent within the city upon whom process against it may be served on behalf of the city or any other party in enforcing this franchise or in asserting any other right or claim. The company, for such purposes, and any other purposes, hereby consents to, and submits to, the laws, jurisdiction and courts of the State of Minnesota.

Section 120. Debt financing.

The company shall make a good faith effort to obtain debt financing for construction and operation of the Saint Paul cable system from the Port Authority of the City of Saint Paul; provided, that the terms and conditions for such debt financing are as favorable to the company as those available to the company from other lending sources.

Section 121. Sale or transfer of the franchise; sale or transfer of stock.

121.(a). The franchise shall not be assigned or transferred or leased, sublet or mortgaged in any manner whether by sale or lease of assets or transfer of control of the company or its parents, or otherwise, either in whole or in part, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the city council which shall not be unreasonably withheld. However, no authorization of the council shall be required for any mortgage, pledge or other encumbrance of this franchise ordinance or the company's cable system as security for financing purposes, so long as:

121.(a).(1). The mortgage, pledge or other encumbrance may not allow any person to succeed to the company's interest in the franchise or the system without the prior approval of the city; and

121.(a).(2). The terms and conditions of the mortgage, pledge or other encumbrance must be subordinate to the terms and conditions of this franchise.

121.(b). The company shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party, of control of the company, or any other event constituting a transfer of the franchise, and shall file a request for approval of the transfer as provided in Chapter 430, containing such information as is required therein. The word "control," as used herein, is not limited to major stockholders, general partners and limited partners, but includes actual working control in whatever manner exercised. Without limiting the foregoing, a ten (10) percent change or more in the ownership of the company shall be presumed to be a change in control. Every change, transfer or acquisition of control of the company shall make the franchise subject to cancellation unless and until the council shall have consented thereto, which consent will not be unreasonably withheld.

121.(c). The acts described in subsections 121.(a) and (b) are collectively referred to as "transfers," and the entity or entities to whom transfer is to be made is referred to below as the "transferee."

121.(d). For the purpose of determining whether it shall consent to a transfer, the city may inquire into the qualification of the prospective transferee, and the company shall assist the council in any such inquiry. The proposed transferee must show financial responsibility as determined by the city and must agree to comply with all provisions of the franchise. A request for a transfer will not be granted unless the council determines that:

121.(d).(1). There will be no adverse effect on the public interest, or the city's interest;

121.(d).(2). The transferee will agree to be bound by all the conditions of the franchise and to assume all the obligations of its predecessor; and

121.(d).(3). Any outstanding compliance and compensation issues have been resolved or are preserved to the satisfaction of the city.

121.(e). The consent or approval of the council to any transfer shall not constitute a waiver or release of the rights of the city, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of the franchise and any amendments or agreements related thereto.

121.(f). In the absence of extraordinary circumstances, the council will not approve any transfer prior to substantial completion of the system upgrade required by Article III.

121.(g). In no event shall any transfer be approved without the transferee becoming a signatory to the franchise, and any amendments or agreements related thereto.

Section 122. Right of municipal acquisition.

122.(a). In the event the company forfeits or upon revocation or other termination of the franchise pursuant to provisions of this ordinance, or at the normal expiration of the franchise term, or in the event of any transfer, the city shall have the right of first refusal to purchase the cable system. The city may, if it chooses, acquire the cable system and its assets and transfer the system and all its assets to a third party purchaser; without limitation, the city may enter into such a purchase agreement before acquiring the cable system and its assets from the company.

122.(b). If the city elects to purchase the system at the normal expiration of the franchise term, or upon transfer, the value of the cable system shall be: the fair market value of the cable system as an ongoing business concern, less the value of the franchise. The value of the cable system shall be determined by a panel of three (3) independent appraisers agreed upon by the city and the company. Should the city and company fail to agree upon the selection of three (3) independent appraisers, each shall select one (1) appraiser. The two (2) appraisers so selected shall then select a third. If the city elects to purchase the system in the event of forfeiture, termination or revocation prior to the normal expiration date, the purchase price to be paid by the city shall be an equitable price. The parties agree that the equitable price shall be the company's capitalization cost less depreciation. "Capitalization cost" shall mean the monies invested for the tangible assets that are being purchased, exclusive of intangible assets such as goodwill or value of the franchise. The date of valuation shall be no earlier than the day following the date for such forfeiture, termination or revocation.

122.(c). Upon exercise of this option and the payment of the above sum by the city and its service of official notice of such action upon the company, the company shall immediately transfer to the city possession and title to all facilities and property, real and personal, of the cable system, free from any and all liens and encumbrances not agreed to be assumed by the city in lieu of some portion of the purchase price set forth above; and the company shall execute such warranty deeds or other instruments of conveyance to the city as shall be necessary for this purpose.

122.(d). Notwithstanding the above, if the cable system or any part of the cable system is abandoned by the company, or if the company fails to operate its cable system in accordance with this franchise during any time it is required to operate its cable system, or the company otherwise terminates its franchise, upon reasonable notice of at least thirty (30) days and an opportunity to be heard, the ownership of the cable system or the abandoned portions thereof in streets or on other public property, or such portion as the city may desire, shall revert to the city and the city may sell, assign, or transfer all or part of the assets of the cable system, or the city council, at its option, may use or dispose of the system as it sees fit. The company shall execute such quit claim deeds and other documents as may be necessary to transfer the cable system or affected part thereof free and clear of liens and encumbrances to the city.

122.(e). Each contract entered into by the company with reference to its cable system or operations under the franchise shall be subject to the exercise of the rights of the city under this section 122.

122.(f). Nothing in this franchise in any respect affects the city's powers of eminent domain, or its right to exercise these powers with respect to the cable system.

122.(g). The company may not take any action that would interfere with the city's purchase rights, or take action that would have the effect of limiting the facilities and equipment available to the city.

Section 123. Certificate of confirmation.

The franchise shall cease to be of any force and effect if the company fails to obtain any authorization required by state or federal law at the time required by such federal or state law.

ARTICLE II. CABLE COMMUNICATIONS REGULATION AND ADMINISTRATION

Section 200. Cable communications regulatory ordinance.

The terms and conditions of this franchise shall be subject to and shall incorporate the provisions of the Cable Communications Regulatory Ordinance, Saint Paul Legislative Code, Chapter 430, as amended from time to time during the term of the franchise if such an amendment adopted after June 1, 1998, does not change any of the express material terms of the franchise, unless the city and the company agree otherwise. Any conflict between express provisions of this franchise ordinance and the regulatory ordinance as it existed on June 1, 1998, shall be resolved in favor of the franchise. However, in interpreting this franchise, no rights pass by implication. By way of example, and not limitation, any conflict between this franchise agreement and a change adopted by the city in the exercise of its police or regulatory powers would be resolved as provided in section 201. By way of further example and not limitation, the company must comply with permitting procedures and permitting fees set forth in Chapters 116 and 135 of the St. Paul Legislative Code. The failure of this franchise to establish or reference a requirement contained in the Legislative Code does not relieve the company of its duties to comply with such requirements. While this franchise is subject to Chapter 430, that chapter is not a contract.

Section 201. Police powers.

In accepting this franchise, the company acknowledges that its rights hereunder are subject to the police power of the city to adopt and enforce ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable laws and ordinances enacted by the city pursuant to such power. The company understands and agrees that the reference to police powers includes, by way of example and not limitation, all regulatory powers of the city that may now exist or be hereafter obtained. Any conflict between the provisions of this franchise and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the latter, except that any such exercise that applies exclusively to the company which contains provisions inconsistent with this franchise shall prevail only if upon such exercise the city finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law. An ordinance that applies to cable systems generally shall not be deemed to apply exclusively to the company. By way of example and not limitation, nothing herein prevents the city from adding or changing requirements governing permitting or use of the streets.

Section 202. Compliance with state and federal laws.

Provisions of Minnesota State law that are required to be incorporated in this franchise, and which are not otherwise already incorporated in this franchise, are hereby specifically adopted and incorporated by reference.

Notwithstanding any other provisions of this franchise to the contrary, the company shall at all times comply with all state laws and rules regarding cable communications not later than one (1) year after they become effective unless otherwise stated and with all federal laws and regulations regarding cable communications as they become effective. Provided, however, if any such state or federal law or regulation shall require the company to perform any service, or shall permit the company to perform any service, or shall prohibit the company from performing any service in conflict with the terms of this

franchise or of any law or regulation of the city, then as soon as possible following knowledge thereof, the company shall notify in writing the city attorney of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city or this franchise.

If the city determines that a material provision of this ordinance is affected by any subsequent action of the state or federal government, or by any order of a court or agency of competent jurisdiction; or in the event the company raises a claim or defense that a material provision is void or otherwise unenforceable in accordance with its terms, the city shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full extent and purpose of this agreement, provided such modifications do not place any greater total financial obligations on the company than were required under this ordinance prior to the action of the state or federal government, or the order by the court or agency, or the date the claim was raised. By way of example, and not limitation, if requirements for system design are ever determined to be unenforceable, the city could increase the company's obligations with respect to PEG access or the institutional network to an amount equal to the savings to the company that result from the state or federal government action.

Section 203. Equal employment opportunity and affirmative action.

203.(a). The company shall not deny service, deny access or otherwise discriminate against subscribers, channel users or other persons on the basis of race, color, creed, religion, ethnic origin, age, sex, sexual or affectional orientation, familial status, marital status, status with regard to public assistance, or handicap. The company shall comply with all requirements of federal, state and local laws and regulations relating to nondiscrimination.

203.(b). The company shall comply with or exceed all federal, state and local laws and regulations relating to equal employment opportunity.

203.(c). The company also agrees to be bound by all the provisions of Chapter 183 of the St. Paul Legislative Code, including those provisions that apply to persons contracting with the city.

203.(d). The city has a goal of assisting economically disadvantaged businesses to participate in public contracts through its Targeted Vendor Development Program, which is addressed in Chapter 81 of the Saint Paul Administrative Code. The city requires the company to make a good faith effort to purchase goods, supplies, and services from targeted vendors certified with the city during this contract period.

Section 204. Labor policies.

204.(a). The wages and benefits paid to the occupational groups utilized by the company or its contractors or subcontractors in the construction, operation, or maintenance of the cable system shall not be less than the wages or fringe benefits paid to comparable positions in the classified civil service system.

204.(b). The company shall recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable laws and shall deal with representatives duly elected by a majority of its employees for the purpose of collective bargaining with respect to compensation, hours of employment or any other terms, conditions or privileges of employment.

204.(c). The company shall ensure that at least seventeen (17) percent of its work force is located within the City of St. Paul.

Section 205. Continuity of service mandatory.

205.(a). It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the company are honored. In the event that the company elects to overbuild, rebuild, modify or sell the system, or the city gives notice of intent to terminate or fails to renew this franchise, the company shall undertake all reasonable efforts to ensure that all subscribers receive continuous, high-quality, uninterrupted service regardless of the circumstances.

205.(b). In the event of a change of franchise, or in the event a new operator acquires the system, the company shall cooperate with the city, new company or operator in maintaining continuity of service to all subscribers. During such period, the company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

205.(c). In the event the franchise is revoked or terminated, the company may be required to continue to provide service for a reasonable period as directed by the city in order to assure an orderly transition of service from the company to another entity. During any such transitional period, the company shall operate its cable system in accordance with the requirements of this franchise and applicable law.

205.(d). In the event the company fails to operate the system for four (4) consecutive days without prior approval of the city or without just cause, or willfully fails to provide service in accordance with its obligations hereunder for any period, the company will be deemed to have abandoned its cable system. The city may, at its option, do any or all of the following:

205.(d).(1). Operate the system or designate an operator until such time as the company restores service under conditions acceptable to the city or a permanent operator is selected. If the city or a designee is required to fulfill this obligation for the company, the company shall reimburse the city or its designee for all reasonable costs or damages in excess of revenues from the cable system received by the city or its designee that are the result of the company's failure to perform.

205.(d).(2). Declare the franchise forfeited and require the company to remove its cable system from the city by a time specified by the city, as provided in Article II, section 212.

205.(d).(3). Take possession of all or a portion of the abandoned facilities, in accordance with Article I, section 122(d).

205.(d).(4). Impose liquidated damages as provided for in this franchise.

205.(d).(5). Exercise any other remedy available to it as a matter of law or equity.

Section 206. Subscriber privacy.

206.(a). No signals, including signals of an interactive communications channel, shall be transmitted from a subscriber terminal for the purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. Neither the company, the city nor any other person shall initiate or use any procedure or device for procuring information or data from a subscriber's terminals or terminal by any means without the prior valid authorization of the affected subscriber. Valid authorization shall mean written approval from the subscriber which shall not have been obtained from the subscriber as a condition of service, except in those situations in which authorization is needed for billing, and which may be revoked by the subscriber at any time without penalty of any kind whatsoever. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission with full knowledge of its provisions. Such written permission shall not extend longer than one (1) year; provided, however, that the subscriber shall have the option to renew upon expiration. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. Such authorization shall be required for each type or classification of signals transmitted from a subscriber terminal.

206.(b). The company shall not collect, compile or retain subscriber data except as necessary for internal business purposes. Neither the company, the city nor any of their agents or employees shall, without the specific written authorization of the affected subscriber, provide data identifying or designating any subscriber to any party other than to the company and its employees or agents for internal business use. This shall include, but not be limited to, lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers. Written permission from the subscriber shall not be required for the systems conducting systemwide 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 provisions of this section.

Section 207. Report on cable utilization.

By February fifteenth of each calendar year, the company shall report to the city on utilization of downstream and upstream subscriber network and institutional network capacity (other than the capacity being utilized by the city or its authorized users). Such report shall identify all services being carried or provided on the cable system, the number of channels utilized, the number of hours per day each channel is utilized, and the number of channels which remain available for carriage of new services.

Section 208. Customer service and subscriber complaint procedures.

208.(a). The company shall comply with all federal and state customer service standards, and in addition will comply with the customer service requirements established by the city from time to time. Without limiting its obligation to comply with customer service standards established under federal, state and local law, the company shall comply with the customer service standards set forth in this franchise, which standards shall be treated as minimum, not maximum requirements. In the event of conflicts between standards, the stricter requirement shall control.

208.(b). At a minimum:

208.(b).(1). During the term of the franchise, the company shall maintain within the city a local business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billings disputes and similar matters. The office must be reachable by a local, toll-free telephone call, and the company shall provide the city with the name, address and telephone number of a person who will act as the company's agent to receive complaints regarding quality of service, equipment malfunctions, billings and similar matters.

208.(b).(2). The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

208.(b).(3). The company shall provide the means to accept complaint calls twenty-four (24) hours a day, seven (7) days a week. Any service complaints from subscribers shall be investigated and acted upon within twenty-four (24) hours. Any service complaint shall be resolved within three (3) calendar days.

208.(b).(4). Upon notification by a subscriber and verification by the company, the company shall credit a subscriber's account on a pro-rata basis for loss of service exceeding four (4) hours within a twenty-four-hour period, or for loss of service that exceeds forty-eight (48) hours in any thirty-day period. The subscriber will be credited for one (1) day of lost service for every four (4) hours the subscriber's service is out. Provided, however, that until March 1, 2001, or the date the upgrade required by Article III is completed, whichever is earlier, subscribers will only be credited for one (1) day of lost service related to the upgrade if there is a twelve-hour loss of service measured over a forty-eight-hour period, or if total outages over any thirty-day period exceed forty-eight (48) hours. Provided further, however, that this exception only applies if the company develops a reasonable cutover plan designed to minimize disruption to subscribers during the upgrade.

208.(b).(5). The company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by the city.

208.(b).(6). As subscribers are connected or reconnected to the system, the company shall, by appropriate means, such as a card or brochure, furnish (i) information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed; and (ii) information concerning the city

office responsible for administration of the franchise, including at least the name of the office, the address and main telephone number of the office.

Section 209. Termination and forfeiture.

209.(a). In addition to all other rights and powers retained by the city under the franchise, Chapter 430 or otherwise, the city reserves the right to forfeit and terminate the franchise and all rights and privileges of the company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the company shall include, but shall not be limited to, the following:

209.(a).(1). Violation of any provision of the franchise or any rule, order, regulation or determination of the city made pursuant to the franchise;

209.(a).(2). Attempting to dispose or disposing of any of the facilities or property of its cable system to prevent the city from purchasing it, as provided for herein;

209.(a).(3). Engaging in a course of conduct intentionally designed to practice any fraud or deceit upon the city, any subscriber or any other user of the system;

209.(a).(4). Attempting to evade the provisions of the franchise;

209.(a).(5). Failure to begin or complete the system upgrade required by Article III, or failing to extend the system as provided under the franchise;

209.(a).(6). Failure to provide the types or quality of service as required herein;

209.(a).(7). Abandonment of the cable system. For purposes of this section, abandonment shall be deemed to mean any event that would constitute abandonment under Article II, section 205, or the failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the city;

209.(a).(8). Any material misrepresentation of fact in application for or negotiation of the franchise;

209.(a).(9). Failure to replenish the fund secured by the letter of credit within thirty (30) days after a draw by city;

209.(a).(10). Failure to maintain bonds and/or insurance; and

209.(a).(11). Failure to activate the channels on the subscriber network or to upgrade the institutional network as required by this franchise.

209.(b). The foregoing shall not constitute a major breach if the violation occurs as a result of circumstances beyond the company's reasonable control. Forces beyond the company's reasonable control include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Events within the control of the company include, but are not limited to, delays caused by the company's (or its parent's) own act or failure to timely act or plan for action. The company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

209.(c). In the event that the city determines that the company has substantially violated any provision of the franchise, any rule or regulation promulgated pursuant hereto or any applicable federal, state or local law, the city shall make a written demand, by registered mail, return receipt requested, upon the company that it remedy such violation and that continued violation may be cause for termination. The city shall give the company thirty (30) days after service of the aforementioned notice to correct the violation.

209.(d). Within that thirty-day period, the company must either cure the violation, or provide satisfactory written proof that a cure cannot be completed within the thirty-day period, but that the cure is being actively and expeditiously pursued, and will be completed within a time certain. If the violation, breach, failure, refusal or neglect is not fully cured within that thirty-day period following written demand; or if there is not written proof satisfactory to the city that corrective action has been taken or is being actively and expeditiously pursued so that the cure will be completed by a time satisfactory to the city; or if the city provides the company additional time to cure and

the company fails to cure within a time satisfactory to the city; the city may place the issue of termination of the franchise before the city council.

209.(e). If the city chooses to place the issue of termination before the city council, a public hearing shall be held and the company shall be provided with an opportunity to be heard upon written notice, by registered mail, return receipt requested, to the company of the cause for termination, the intent to terminate and the time and place of said public hearing.

209.(f). The city council shall hear and consider the issue and shall hear any person interested therein, and shall determine, in its discretion, whether or not any violation by the company has occurred. If the council determines that the violation by the company was within its control, and that the company has failed to completely cure the violation, the council may, by resolution, declare that the company's franchise be forfeited and terminated. Nothing herein prevents the city from providing the company with additional opportunities to cure. The city council may not give the company any opportunity to comply where fraud and/or misrepresentation has been alleged and proved to the council's satisfaction.

209.(g). Notwithstanding the foregoing, the city may revoke the franchise or exercise any of the other remedies set forth in the corrective plan, as amended, in accordance with the procedures set forth in the corrective plan, as amended (the term "corrective plan," as used in this franchise, refers to the corrective plan and the corrective plan agreement dated December 22, 1997).

Section 210. Liquidated damages; penalties.

210.(a). The parties agree that the amount of damages for violation of certain franchise provisions may be difficult to ascertain, and for that reason, agree that liquidated damages may be assessed against the company and charged against the letter of credit as follows (amounts are in 1997 dollars):

210.(a).(1). For failure to complete system upgrade required by Article III in accordance with the franchise and any approved construction plan within forty-two (42) months of the effective date of the franchise; or for a failure to satisfy any of the deadlines established under Exhibit A, unless the city council specifically approves the delay by motion or resolution due to the occurrence of conditions beyond company's reasonable control, liquidated damages may be assessed as follows:

(A). Up to two hundred fifty dollars (\$250.00) per day for the first sixty (60) days or part thereof, the deficiency continues;

(B). Between sixty (60) days and six (6) months, up to five hundred dollars (\$500.00) per day or part thereof the deficiency continues;

(C). After six (6) months, up to one thousand dollars (\$1,000.00) per day or part thereof the deficiency continues.

210.(a).(2). For failure to provide data, documents, reports, information or to cooperate with the city during an applicable process or cable communication system review, the company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation occurs or continues.

210.(a).(3). For failure to test, analyze and report on the performance of the system following a request pursuant to the franchise, the company shall pay to the city fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.

210.(a).(4). For transferring the franchise without the prior approval of the city, two thousand dollars (\$2,000.00) per day for each day that the violation continues;

210.(a).(5). For failure to comply with any other provision of the franchise for which damages may be difficult to ascertain, including the customer service requirements, the company shall pay to the city two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.

210.(a).(6). For initiating or using a procedure or device for procuring information or data from a subscriber's terminal, dwelling or business without the prior valid

authorization of the affected subscriber as required by Article II, section 206(a) of this franchise, the company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation continues or occurs.

210.(a).(7). For selling, providing or otherwise making available to anyone any information about subscribers obtained by monitoring transmission of any type of signal from a subscriber's terminal, dwelling or place of business without the specific written authorization of the subscriber as required by Article II, section 206(b) of this franchise, the company shall pay five thousand dollars (\$5,000.00) for each such violation. In addition, the total amount of funds paid to the company for this information shall be forfeited to the city by the company.

210.(a).(8). For tapping, monitoring, or for arranging to tap or monitor, or permitting the tapping of any cable, line, signal, input device or subscriber outlet or receiver for any purpose whatsoever without the specific written authorization of the subscriber or pursuant to court order, the company shall pay ten thousand dollars (\$10,000.00) per day for each day, or part thereof, the violation occurs or continues.

210.(b). Each breach of each provision shall be considered a separate breach for which separate liquidated damages can be imposed.

210.(c). A violation of any provision of the Saint Paul Legislative Code, Chapter 430 is by Saint Paul Legislative Code, section 1.05 deemed to be a misdemeanor.

210.(d). The rights reserved by the city herein are in addition to all other rights and remedies the city may have under this franchise or any other law and are not intended to be exclusive; nor shall this provision be read to supersede or limit the applicability of any penalty provisions under Chapter 430 or other provisions of the Legislative Code, all of which shall apply.

Section 211. Abandonment of service.

The company shall not, without having given three (3) months prior notice to the city, cease providing any cable service required pursuant to this agreement. The company shall not cease providing any cable service or any portions thereof, even with the required notice, without compensating the city for damage resulting to it from such abandonment. Public, educational and governmental access channels and services and institutional network channels and services may not be abandoned.

Section 212. Removal of cable equipment upon termination or forfeiture or abandonment.

212.(a). Upon termination or forfeiture of a franchise, or abandonment of the franchise or the system, if the city so requests in writing, the company shall remove its cable system or such portions of it as the city may direct from the streets and other public property within the franchise area. Such request shall be served upon the company's local business office by registered mail, return receipt requested, and shall give the company a reasonable period of time to effectuate such removal. The city may require the company to submit a plan for removal by a date certain, and require the company to comply with that plan and such other conditions as the city may reasonably establish to protect the streets and public and private property, or to protect the city's rights under this franchise.

212.(b). Should the company fail to remove the cable system, fail to act in compliance with an approved removal plan, or fail to restore property to the satisfaction of the city, the city shall have the right to treat all or part of the cable system as abandoned and to exercise its rights under Article I, section 122, and shall have the right to remove all or portions of the cable system at the expense of the company and the company shall, upon written demand, pay to the city the cost of such work done or performed by the city.

212.(c). The company shall restore streets and other public property disturbed by the removal of the cable system to at least as good a condition as existed immediately prior to removal.

ARTICLE III. CABLE SYSTEM FEATURES

Section 300. Subscriber network.

300.(a). The company will upgrade the portion of the cable system primarily designed to provide cable services to residential subscribers as required by this Article III. The upgrade must be completed no later than thirty-six (36) months after the effective date of this franchise.

300.(a).(1). The upgraded system will use a fiber to the area node architecture (hybrid fiber-coax).

300.(a).(2). On average, the system will pass no more than one thousand two hundred (1,200) residential units per fiber node, and the plant from any node will not pass more than one thousand five hundred (1,500) residential units. On average, there will be no more than seven (7) active components in a cascade from the headend to the tap from which a subscriber is served, and no more than nine (9) active components in any cascade.

300.(a).(3). All active distribution electronics will be 750 MHz equipment, or equipment of higher bandwidth. All passive electronic components will be rated at 1 GHz or higher.

300.(a).(4). The cable system will be two-way activated upon completion of the system upgrade. This two-way activated capacity must be capable of supporting two-way high-speed Internet access via the cable system.

300.(a).(5). All power supplies will be inspected and replaced as necessary to provide reliable service; backup power supplies will be provided as described in more detail below.

300.(b). System functionality.

300.(b).(1). As designed, upgraded and maintained, the subscriber network must have a reliability comparable to the reliability of the highest quality cable systems whose initial construction or rebuild was completed after 1996. Reliability is measured in terms of number of outages, outage duration and number of subscribers affected by outages.

300.(b).(2). As designed, upgraded and maintained, the cable system must be adequately segmented to meet subscriber demand.

300.(b).(3). As designed, upgraded and maintained, the cable system must be able to deliver high quality signals that meet FCC technical quality standards.

300.(b).(4). The cable system must be designed, and must be maintained so that it has the upgradeability and flexibility to provide new services without the need for substantial new network construction.

300.(b).(5). Upon completion of the upgrade, all facilities and equipment will be installed (except customer premises equipment) so that the two-way active capability required by section 300(a)(4) is fully ready to operate upon subscriber request, with no further adjustments to the system.

300.(b).(6). The requirement that backup power be provided requires twenty-four-hour backup at the headend, three-hour rated backup at each node, three-hour rated backup covering coaxial amplifiers throughout the system, and six-hour rated backup for hub sites and optical transition nodes. Such equipment shall be constructed and maintained so as to cut in automatically upon failure of the commercial utility power; to revert automatically to a standby mode when alternating current power returns; and so that it complies with all utility and other safety regulations to prevent the alternate power supply from powering a "dead" utility line so as to prevent injury to any person. The term "rated" in this section refers to rated at 68 F. Backup power supplies will be monitored remotely to determine condition and when they have begun to operate due to loss of electrical power.

300.(b).(7). The system shall be capable of and shall deliver standard color and monochrome signals on all channels without noticeable picture degradation or visible evidence of color distortion or other forms of interference directly attributable to the performance of the cable system; and without noticeable sound distortion. The company shall use equipment generally used in high-quality reliable modern systems. This requires that equipment be installed at the headend to allow the company to cablecast

signals in substantially the form received, without substantial alteration or deterioration (for example, the headend should include equipment that will transmit color video signals received at the headend in color, and stereo signals in stereo). Equipment must be installed so that all closed captioning programming received by the cable system shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards.

300.(c). The company shall develop a construction plan as required by Exhibit A, and shall regularly meet with the city during the course of construction in order to ensure that the cable system is completed in conformity with the requirements of the franchise and other applicable law, with minimum disruption.

300.(d). Upon completion of the upgrade, the company will deliver at least seventy-seven (77) analog channels of video programming services to subscribers.

300.(e). Pending completion of the upgrade required by this section 300, the company will provide the services and facilities that were being provided pursuant to the requirements of Ordinance No. 17071, adopted November 10, 1983, as amended (Appendix H).

300.(f). Throughout the franchise term, the company shall provide and maintain all equipment necessary and all capacity necessary to allow for an audio and visual override on all channels simultaneously for public emergency announcements by the city. This emergency override system must be designed so that it can be activated remotely by the city, or those authorized by the city to utilize the system. It is the city's responsibility to develop a plan for its use of this capability, and the company's responsibility to cooperate with the city so that the plan may be implemented. The company shall not be responsible for any action overriding channels that may conflict with federal, state or local law. The emergency override system must operate in a manner consistent with any emergency alert system that the company is obligated to provide under federal or state law.

300.(g). System changes.

300.(g).(1). If the company moves its headend or its operations, it will ensure that subscribers are not adversely affected thereby in any respect.

300.(g).(2). If the company modifies its cable system or its operations in a manner that has the effect of requiring modifications to public, educational and governmental ("PEG") use facilities and equipment, including institutional network facilities and equipment, the company will bear any cost required to ensure that there is no adverse effect on the city or those the city authorizes to use the institutional network; or on the persons responsible for managing the PEG access channels on the subscriber network. If for example, the company moves its headend, and that relocation has the effect of requiring different or additional connections in order to maintain the quality and capability of links between the master control playback for the PEG channels and the existing cable company facilities at the Union Depot that were in place as of June 1, 1997, the company would provide such connections at its cost. Likewise, for example, if the company moves its headend, it must at its cost either maintain facilities at the Union Depot so that all institutional network connections continue to operate as before that move, and/or it must provide new connections of equal quality, satisfactory to the city, so that the institutional network's operations are in no way affected by the move. If, for example, the company changes the manner in which signals must be transmitted over the cable system in order to be receivable by the subscriber on the subscriber's terminal equipment, the company at its cost will provide such facilities and equipment as are necessary so the PEG use signals are useable at the terminal equipment.

300.(g).(3). The company will provide all subscribers that receive only basic service with a converter box that will allow them to receive the same channel numbers as subscribers who receive expanded basic service.

300.(h). Access channels.

300.(h).(1). The company shall make available for access programming purposes seven (7) channels on the subscriber network for PEG access use, as follows: four (4) channels for public access; one (1) channel for government access; one (1) for educational access; and one (1) channel for regional PEG access. One (1) additional channel shall be provided upon the city's request whenever (A) all public; or (B) all educational; or (C) the government channels; or (D) the regional channel is in use during eighty (80) percent of the weekdays, Monday to Friday, for eighty (80) percent of the time during any consecutive three-hour period for six (6) weeks running. The company shall have six (6) months from the date of the request in which to provide the new channel, but the company need not provide the channel until after the date scheduled for completion of the upgrade required by Article III (or, if earlier, the date the upgrade is actually completed).

300.(h).(2). The term "channel" refers to capacity sufficient to transmit a standard NTSC television signal (6 MHz), but the channel capacity so designated may be used by the city or its designees to transmit information to subscribers in any format. The term "program" or "programming" as used in relation to the PEG channels or institutional network is not limited to video programming and instead shall mean any signal, message, graphics, data, or communication content service or broadcast-type program. The term "regional access channel" refers to a channel that is utilized to show PEG programming that originates in other communities in the Twin Cities region, or programming of interest to the region (although such programming may also appear on any appropriate access channel, at the discretion of the person responsible for managing the channel). The city may take advantage of compression or other technologies to transmit multiple signals on any channel, should it choose to do so.

300.(h).(3). The company will not change the current channel positions of public (channels 77, 33, 34, and 35), government (channel 18), the regional channel (channel 6), or educational (channel 32) access channels, unless new locations are mutually agreed upon by the company and city or required by state or federal law.

300.(h).(4). The government access channels shall be administered solely by the city or its designee. The PEG use channels shall be administered by an entity or entities designated by the city, or in such other manner as the city, in its sole discretion, determines. Where there is shared use of a channel, for PEG and non-PEG purposes, the company shall administer non-PEG use of the channel.

300.(i). Access channel usage.

300.(i).(1). The city and the company agree that the initial rules for use of the PEG access channels, facilities and equipment shall be the rules that were in effect as of September 1, 1997. The rules and procedures may be changed by the city, or by action of the person responsible for managing a particular PEG channel (the "designated entity"). *Provided, however, any rule for use shall be consistent with the requirements of Minnesota law, as the same existed on the effective date of this ordinance, and consistent with provisions of federal law prohibiting company control of the editorial content of PEG channels.* The company shall be provided with a copy of any proposed amendments and a reasonable opportunity to comment on those amendments to the rules. The company's approval of any amendment is not required and the company is not responsible in any manner for the rules and procedures, or their application, except as state law requires that it be responsible for such rules.

300.(i).(2). All programming and/or information carried on the access channels, except for the leased access channels, shall be noncommercial in nature. As used herein, the term "noncommercial" shall mean that the programming and/or information carried on the access channels shall not include any advertising except such underwriting credits as may be allowed under the aforementioned access rules. No portion of any access channel other than the leased access channel shall be leased, transferred or otherwise assigned by the city and/or SPNN or other designated access entity to any third party for any purpose without the company's written consent.

300.(j). The company, at its cost, shall maintain and operate the system so that the city or the designated entities or users of PEG use capacity (through the designated entity) may transmit signals upstream from distant locations on the institutional network whether existing as of the effective date of the franchise, or added thereafter; and so that the city may transmit signals upstream from City Hall playback facilities to the headend, to the designated entities' respective master controls and to subscribers. The company shall also maintain and operate the system so that signals can be routed onto the appropriate PEG use channels and so that designated entities may, from their respective master control sites, receive signals from and transmit signals to the headend and out through the institutional network and the subscriber network on the appropriate channels. Designated entities must be able to control signals from distant locations and preview them before they are transmitted to subscribers or to the institutional network. The company shall at all times provide a dedicated connection to the master playback controls for the PEG access channels with sufficient capacity so that each designated entity can program the channels under its control. In addition, the company shall provide a connection with sufficient activated capacity so that the public access designated entities may program all the subscriber network PEG channels for which they have playback responsibility simultaneously, and so the public access master playback control can preview signals originated elsewhere and route them onto the appropriate channels. The company shall maintain and operate the system so that the city or its designated entities can take advantage of the capabilities of the system.

300.(k). The company shall further maintain and operate the system so that signals as received by subscribers (whether originated at the master control or at distant locations on the institutional network) meet or exceed signal quality standards established by the FCC, or such other standards as may be required under other provisions of this franchise, but the company is not responsible for signal quality problems that result from the failure of the city or an access user or designated entity to provide an adequate signal at the point the signal is delivered to the company. Delivery is deemed to occur at the input of the modulator (or other device used to place a signal on the network so that it can be transmitted to the headend). The company shall use components and provide maintenance services for PEG access channels and associated system equipment at least of the same quality as the components and maintenance services for other channels. The obligation to maintain and operate includes, but is not limited to, the obligation to provide connections and electronics, including temporary drops, and connections from the master control to the headend as required to accomplish the foregoing, including all necessary modulators and demodulators.

300.(l). Miscellaneous PEG requirements.

300.(l).(1). The company is required to deliver the PEG channels to subscribers in an analog format unless and until all other channels on the system are delivered in a digital format, or until the city directs otherwise. Digital PEG access channels shall have the same bandwidth and transmission quality as is used to carry any of the commercial channels that deliver programming to the company in a similar format. At all times, the PEG access channels must be receivable by subscribers without special expense, other than the expense required to receive basic service. Designated entities have no obligation to provide a signal to the company in a digital format. If the city requests that its PEG access channels be converted to digital format before the company has converted all other channels to digital format, the city is responsible for the cost of converting such channels to digital format.

300.(l).(2). A use other than a standard NTSC use on the subscriber network shall be subject to the company's prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other channels. Such uses must be in furtherance of PEG uses.

300.(l).(3). The company, upon request of a designated entity, will provide technical assistance or diagnostic services to determine whether or not the problem with the PEG

signals is the result of matters for which the company is responsible, and if so the company will take prompt corrective actions.

300.(l).(4). The company will provide any PEG access channels on the basic tier throughout the life of the franchise, or if there is no basic tier, shall provide the PEG access channels to any person who subscribes to any level of cable video programming service at no additional charge, and otherwise in accordance with federal and state law. If channels are selected through a menu system, the PEG access channels shall be displayed in the same manner as other channels.

300.(l).(5). The company shall not charge for use of the PEG access channels, equipment, facilities or services.

Section 301. Institutional network.

301.(a). The company shall construct, maintain and operate an institutional network for the use of the city and entities authorized by the city to use the institutional network for noncommercial purposes; "noncommercial" has the same meaning as in section 300(i)(2) except that nothing in this section 301(a) or section 300(i)(2) shall prevent an institutional network user from charging to recover its costs, or prevent the city from charging other institutional network users to recover its costs. The obligation to construct, maintain and operate an institutional network shall apply throughout the term of this franchise, and for any period that the company continues to operate within the City of St. Paul, except as provided in section 301(c). The institutional network shall consist of four (4) distinct but integrated parts:

301.(a).(1). The CityLink network, a coaxial portion of the institutional network linking certain locations within the downtown St. Paul area and developed as part of an institutional network development project pursuant to Appendix H.

301.(a).(2). The "Coaxial Institutional Network," the institutional network (other than the CityLink) required by Appendix H of the St. Paul Legislative Code, Article III, sections 1--3;

301.(a).(3). The "Upgraded HFC Institutional Network," which shall be the institutional network described by section 301(a)(2) as upgraded pursuant to the corrective plan; and

301.(a).(4). The Fiber Institutional Network, a fiber-to-the-location institutional network described in Exhibit B to this franchise and in section 301(e).

301.(a).(5). The institutional network shall satisfy the performance and testing standards referenced in this franchise and set forth in Exhibits B and C.

301.(b). The city will retain control of the entire capacity of CityLink, the cable broadband network developed as part of the institutional network demonstration projects, and may use all the capacity on CityLink for transmission and reception of data, video or other communications at no charge. The company, at its cost, will maintain the CityLink network from the city's points of connection, whether the city's end user equipment or the city's control system for CityLink, through the network, including the company's headend and remodulators so that it may be used for those purposes. The maintenance obligation includes, but is not limited to, the replacement of network components. Operational responsibilities will be shared as those responsibilities have been shared prior to December 1, 1997, with each party bearing its own costs. The city shall have the right, at its cost, to install equipment and devices on the system as appropriate to accommodate new services or functions, so long as it does not degrade technical system operation, and, further, for that portion of the system which the company maintains, the right is subject to the consent of the company, which shall not be unreasonably withheld. The company, upon request, will install one (1) standard drop from the network to city buildings adjacent to the network at no charge, and otherwise will extend CityLink upon written request, but may charge the city the actual cost it incurs in extending the system, including drop costs. The parties will cooperate to share information and to assist each other technically as required to assure the efficient

operation of the CityLink. A map showing CityLink as it existed as of January 1, 1998, is attached as Exhibit E.

301.(c). The Coaxial Institutional Network shall be constructed, provided and maintained at the company's cost as required by Appendix H, until the Upgraded HFC Institutional Network is completed. From and after completion of the Upgraded HFC Institutional Network, only the obligations established by or incorporated into the requirements for the Upgraded HFC Institutional Network shall apply.

301.(d). The Upgraded HFC Institutional Network shall be constructed, operated and maintained as required by the corrective plan, which is attached hereto as Exhibit C. The corrective plan obligations shall apply throughout the term of this franchise as if fully set forth herein, and for any period that the company continues to operate within the City of St. Paul. The responsibility for costs and respective rights of the parties shall be as specified in the corrective plan (as clarified by the agreement dated April 15, 1998), with the following additional amendments:

301.(d).(1). Under the corrective plan, the city is entitled to use all the capacity on the hybrid-fiber coaxial portion of the Institutional Network except for 12 MHz in the forward path and 12 MHz in the reverse path as initially activated. The city agrees that the company may utilize up to twenty (20) percent of the available capacity in the forward path on the hybrid-fiber coaxial portion of the Upgraded HFC Institutional Network (counting the 12 MHz as part of the twenty (20) percent) and twenty (20) percent of the available capacity in the reverse path on the hybrid-fiber coaxial portion of the Upgraded HFC Institutional Network (counting the 12 MHz as part of the twenty (20) percent), so long as the company does so in a manner that (i) does not impair the city's use of the institutional network in any respect; and (ii) does not impose additional cost upon the city. Available capacity is defined as the portion of the 450 MHz activated capacity in a particular direction that is useable, less the capacity devoted to pilot and control signals that benefit the city.

301.(d).(2). Under the corrective plan, the city is entitled to fifty (50) percent of any increase in the hybrid-fiber coaxial portion of the Upgraded HFC institutional Network. If the capacity of the hybrid-fiber coaxial portion of the Upgraded HFC Network is increased by the company, the company shall make additional capacity available to the city within six (6) months of a request therefor. However, the city agrees that on or before the time it requests such additional capacity, it will submit a plan for use of that capacity to the company, showing why it believes that there is a need therefor. The company may, within forty-five (45) days of receipt of the plan, submit an alternative plan for satisfying the city's needs. If the city, in its sole discretion, decides that the alternative plan is adequate, it will rescind its request; otherwise, the requested capacity must be provided. The parties clarify that this provision does not place an independent obligation on the company to increase the capacity of the Upgraded Institutional Network.

301.(d).(3). Under the corrective plan, the company is required to activate a single data channel in the forward path and a single data channel in the reverse path for city use. Within six (6) months of a city request therefor, the company agrees to provide an additional data channel in the forward and reverse paths for city use as more fully described in Exhibit B.

301.(d).(4). Under the corrective plan, the company is required to activate a single data channel in the forward path and a single data channel in the reverse path for school use. Within six (6) months of a city request therefor, the company agrees to provide an additional data channel in the forward and reverse paths for school use as more fully described in Exhibit B.

301.(d).(5). The corrective plan establishes a series of testing procedures and other obligations that are not applicable to CityLink or to the Fiber Institutional Network required herein. The corrective plan is hereby clarified to provide that the space that the company agrees to provide at the headend can be utilized for any part of the institutional network; that the testing procedures that apply with respect to video transmissions and data transmissions shall also apply to the CityLink and to the Fiber

Institutional Network; and to provide that the requirements of Attachment 2-F-1-- Attachment 2-F-2 shall be read to extend to all portions of the institutional network. *Provided that*, with respect to the dark fiber provided by the company for the Fiber Institutional Network, the tests shall be performed in accordance with Exhibit B. *Provided further*, notwithstanding any other provision of the corrective plan, maintenance of the Fiber Institutional Network shall be paid for as provided below.

301.(d).(6). The corrective plan is clarified to make it clear that the city may improve any portion of the institutional network at any time (before and after it is upgraded) to increase the capabilities of the institutional network at its cost.

301.(d).(7). The company and the city shall also be bound by the requirements of the corrective plan agreement, as if fully set forth herein, except that the provisions of section 6 and section 8 shall not apply.

301.(e). The company will construct, operate and maintain a Fiber Institutional Network as provided herein.

301.(e).(1). The company at its cost will install fiber to the locations specified in Exhibit B. The fibers will be installed in the amount and in a topology as indicated on Exhibit B. If a ring topology is not used, the City Hall Annex will serve as the core location. This fiber must be installed no later than the time the company upgrades the subscriber network, and must be completed and successfully tested on or before the date scheduled for completion of the subscriber network upgrade, except as otherwise provided in Exhibit B. These fibers will be installed at no charge to the city, except with respect to locations that are to be designated by November 30, 1998. With respect to those locations, if the average incremental cost of providing fiber to those locations exceeds the average incremental cost of providing fiber to all other locations listed on Exhibit B, the city will pay an amount equal to the amount by which the average cost of serving the newly designated locations (or, if lower, the not-to-exceed incremental cost estimate) exceeds the average cost of serving the other locations (or, if higher, the average cost estimate described below) (the "average cost excess"). Within thirty (30) days of the date the city designates the additional locations, the company must provide a not-to-exceed cost estimate of the incremental cost of providing fiber to those locations and an estimate of the average cost of providing fiber to all other locations. The city will then only be liable to pay the average cost excess if the city directs the company to install the fiber to the newly designated locations. All installation will be planned to take advantage of economies of scale and minimize future maintenance costs to the city.

301.(e).(2). If the city desires to have the Fiber Institutional Network extended to locations other than those specified on Exhibit B, by the company, it may require the company to extend the Fiber Institutional Network, but the city shall pay the company the company's incremental cost for installing the fiber as provided in section 301(e)(3). Any fiber shall be installed in the number and in a topology designated by the city.

301.(e).(3). If the city notifies the company that it desires to have fiber installed to a particular location, pursuant to section 301(e)(2), the company will develop a "not-to-exceed" price for the extension based upon its estimated incremental extension costs. The extension will be planned to take advantage of any economies of scale that may result from installation of fiber at the same time that the company installs fiber for its own purposes, and to minimize maintenance costs for the city. If the city directs the company to install the fibers to that location, the company may bill the city for its incremental costs, up to the not-to-exceed price, upon completion, testing and acceptance of the fiber link.

301.(e).(4). Nothing herein prevents the city from extending the Fiber Institutional Network itself, at its own cost.

301.(e).(5). The company, if requested to do so, shall maintain the Fiber Institutional Network. Beginning on the later of the date the upgrade to the subscriber network is completed or thirty-six (36) months after the effective date of the franchise, it may

charge the city its actual incremental direct costs for maintenance, plus ten (10) percent. However, the company may not charge for maintenance unless it provides the city six (6) months notice in advance that it intends to do so. The actual incremental direct cost will be deemed to be \$0.00 where the fiber used for the Fiber Institutional Network is included in or lashed to a fiber sheath containing fibers that are used for other portions of the institutional network or other portions of the company's cable system. The city may maintain the Fiber Institutional Network itself, if it wishes to do so. "Maintenance" for purposes of this section means ordinary preventive and corrective maintenance and inspections. If the Fiber Institutional Network plant is cut or destroyed or must be relocated, it is the company's duty to replace, repair or relocate the plant, at its cost.

301.(e).(6). The company shall provide the city with access to its facilities and equipment as necessary to maintain or upgrade the Fiber Institutional Network with reasonable notice given the nature of the problem.

301.(e).(7). The Fiber Institutional Network fibers shall be for the exclusive use of the city, or other persons authorized by the city to use the Fiber Institutional Network.

301.(e).(8). The company shall otherwise construct, operate and maintain the Fiber Institutional Network, and charge for construction or maintenance as provided in Exhibit B.

301.(f). There shall be no charge for the institutional network or its use, other than the construction charges and maintenance charges for the Fiber Institutional Network set out in section 301(e).

Section 302. Existing facilities.

302.(a). Whether specifically enumerated herein or not, the company shall continue through this franchise term to provide all PEG use facilities and equipment that it was providing or was required to provide as of June 1, 1997. By way of example and not limitation, all then-existing production equipment provided by the company will continue to be provided for PEG use. Likewise, all institutional network facilities and equipment necessary or useful to the operation of the institutional network required hereunder will continue to be provided.

Section 303. Interconnection with neighboring CATV systems.

303.(a). The company shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereby established for the purpose of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the city.

303.(b). Upon city request, the company shall negotiate in good faith to interconnect the cable system with contiguous cable systems. Within three (3) months of a city request, the company shall report to the city the results of the negotiations. Where the company has negotiated in good faith with the cable operator of a contiguous cable system and where that operator refuses to interconnect, the city shall not penalize the company for such failure to interconnect. The city shall not require the company to interconnect where the company would be required to pay more than its pro-rata share of the interconnection costs based upon the number of basic subscribers served.

303.(c). Notwithstanding the above, except in the case of an unaffiliated cable operator of a contiguous cable system that refuses to interconnect, the company shall interconnect with all contiguous cable systems operated in the Minneapolis-Saint Paul metropolitan area no later than six (6) months after the effective date of this franchise, unless the city determines that a particular interconnection is not in the public interest. The interconnections shall permit:

303.(c).(1). The interconnected systems to exchange PEG programming intended to be carried on the subscriber network, including, by way of example and not limitation, live coverage of public meetings; and

303.(c).(2). Institutional network signals, including by way of example and not limitation, data transmissions so that governments on the interconnected systems can access remote databases, and video transmissions to permit teleconferencing.

Section 304. Support for public, educational and government use of the cable system.*

304.(a). In addition to satisfying the other requirements of this Article III, the company is required to provide the following additional PEG use funding (as used in this section 304, PEG access refers to the channels, facilities and equipment used in connection with the channels on the subscriber network provided under section 300 and associated interconnections; PEG use includes PEG access and institutional network use):

304.(a).(1). On the effective date of the franchise, and on each of the first four (4) anniversaries of that effective date, the company will pay the city one hundred thousand dollars (\$100,000.00), in 1997 dollars, for any use in connection with the institutional network.

304.(a).(2). The company will provide the following periodic capital grants for PEG access, in 1997 dollars:

(A). On the effective date of the franchise: five hundred thousand dollars (\$500,000.00).

(B). On each of the third and seventh anniversaries of the effective date of the franchise: five hundred thousand dollars (\$500,000.00).

(C). On the effective date of the franchise, and on each anniversary of the franchise: fifty thousand dollars (\$50,000.00).

(D). If the franchise term is extended, the company will continue to pay the amount required by subsection 304(a)(3), and it shall pay an additional two hundred fifty thousand dollars (\$250,000.00) on the eleventh anniversary of the effective date of the franchise.

304.(a).(3). In addition to the capital grant provided under section 304(a)(1)--(3), the company will provide the following capital grant for PEG use for so long as it continues to operate under this franchise: six hundred thirty thousand dollars (\$630,000.00) per year, increased each year for the increase from the Minneapolis-St. Paul Consumer Price Index for all consumers, all items, with the base year for the calculation being 1997 (if there is no CPI for Minneapolis-St. Paul, the closest equivalent index will be used). Thus, by way of example, the payment due in 1999 would be multiplied by the increase in the CPI for 1998 over 1997 levels, and the resulting amount would be added to six hundred thirty thousand dollars (\$630,000.00) to yield the total amount due. The payment due in the year 2000 would be the 1999 payment, plus an amount equal to the 1999 payment multiplied by the 1999 increase in the CPI over 1998 levels. The amounts owed for a year will be spread evenly over four (4) quarterly payments, with payments due on February 15, the second payment due on May 15, the third payment due August 15 and the fourth payment due November 15. Provided that, for the first year of the franchise, the first payment owed under this franchise will be made on the effective date and will be a pro-rated amount, reflecting the time remaining in the then-current calendar quarter from the effective date. For example, if the franchise became effective March 1, the company would pay fifty-two thousand five hundred dollars (\$52,500.00) (one-third of the quarterly payment due on May 15).

304.(a).(4). Notwithstanding the foregoing requirements of section 304(a)(4), if the company has a valid and binding contract with an entity designated by the city to manage any public access channel, the city agrees that company may offset any amount it pays under such contract against payments required under section 304(a)(4). The city may establish offset limits for each calendar year by resolution. Nothing in this section requires or shall be deemed to require the company to make any payment that constitutes a franchise fee under 47 U.S.C. § 542.

304.(b). Throughout the franchise term, playback for the PEG access channels must be configured so that the designated entities that are responsible for the access channels are able to use their own independent automated playback facilities, located on the

premises of their choice. Any master control that the company intends to use for its operations must be located outside the space occupied by a designated entity, unless the parties agree otherwise. The playback facility must be configured so as to permit the designated entity to program all channels for which it is responsible for playback, on a live or taped basis. The company shall continue to have access to the designated entity's master control so that it can conduct necessary maintenance and repair upon reasonable notice or at any time in the event of emergencies.

304.(c). Public access facilities.

304.(c).(1). Throughout the franchise term, the company shall provide, free of rent and other charges, except those specified below, the approximately six thousand six hundred ninety (6,690) square feet of space at the Union Depot shown on Exhibit D (hereinafter "designated space" or "space") for use by the designated entity responsible for public access. In addition, the company shall provide the approximately two thousand five hundred (2,500) square feet of space at the Union Depot shown on Exhibit D (hereinafter the "expansion space"). The designated entity shall pay the company fifty (50) percent of the amount (if any) actually paid by the company annually for rent and property taxes for the expansion space, but no more than twelve thousand five hundred dollars (\$12,500.00) per annum, plus the operating charges specified below. The designated space shall include the studio, edit facilities and other equipment and resources, available for PEG use as of December 1, 1997. The company shall maintain the availability of existing utilities and HVAC in designated space and expansion space as part of the company's obligation to ensure that this space remains commercially habitable consistent with its existing use and will allow the designated entity to expand HVAC and utilities, and allow the designated entity temporary access to its space for such purposes. In addition, the company shall ensure that restroom facilities are available to the designated space, in addition to the restrooms available to the expansion space.

304.(d). In the event the designated entity is denied use of the designated space or expansion space by the company or any third party, the use of the designated space or expansion space is prohibited by local law or code, or the designated space or expansion space is rendered unfit for use as a video production and playback facility, the company shall provide to the designated entity on comparable terms and conditions six thousand six hundred ninety (6,690) square feet of space comparable to the designated space and two thousand five hundred (2,500) square feet of contiguous space comparable to the expansion space, finished to comparable quality and with comparable utilities and services as existed in the designated space and expansion space at the time of relocation at an alternative location (hereinafter "substitute space" or "space"), mutually selected by the company and city, or, if the parties cannot agree, by binding arbitration pursuant to section 430.035 of the city's Legislative Code. The company shall pay reasonable relocation expenses, including, but not limited to, expenses for reinstalling electrical and technical equipment and for third-party reactivation, reconnection of internal equipment, and balancing. The alternative space must be provided so that there is no interruption in PEG operations.

304.(e). The company shall fully cooperate with the designated entity if the designated entity requests assistance in acquiring additional space in the Union Depot or such other location where studio facilities may be located pursuant to section 304(d), to the extent space is available. The company shall agree to a reasonable exchange of remaining capital or other payments hereunder for additional space for the designated entity so long as the company's costs, expenses or obligations shall be no greater than those set forth in this franchise.

304.(f). The designated entity shall pay all costs and expenses of the designated space and expansion space for utilities, insurance and internal maintenance. To the extent any such expenses are included in comprehensive billings or invoices for all of the company's area, the company shall make a pro rata allocation based upon square footage used (approximately twenty-seven and one-half (27.5) percent of all space occupied by the

company or to be occupied by the designated entity as of the date of this franchise) and otherwise shall provide the designated entity with monthly bills for such expenses fairly attributable to the space of the designated entity. The designated entity is only required to pay for these expenses after they are paid for in full by the company, and only if the company provides proof of payment, along with copies of the bills paid. If the company subsequently recovers any of these costs through refund, rebate, or settlement, the designated entity will receive that refund, rebate or settlement (or a share of the same, to the extent the rebate, refund or settlement is for a bill that includes designated space and expansion space and space occupied by the company). The company may not add any overhead to the expenses the designated entity is required to pay under this section, or otherwise charge the designated entity for any service rendered by an affiliate of the company. The company is not required to provide security service to the access manager for the access manager's space or expansion space, but if the designated entity requests it, shall arrange for security services for the designated space and expansion space, at the designated entity's cost. The city, or designated entity, may examine the water bills, invoices, meter readings or other bases for the monthly bills to the designated entity to satisfy itself that the allocation is fair and reasonable. Payments owed by the designated entity shall be made within thirty (30) days of a billing by the company in accordance with this section 304(f).

304.(g). The designated entity may make leasehold improvements to the designated space and expansion space, or to the alternative space provided pursuant to section 304(d). The designated entity shall maintain the space, ordinary wear and tear excepted. The designated entity shall use the space for purposes consistent with its PEG obligations and shall not unreasonably interfere with the company's office operations.

304.(h). The company shall provide the following promotional support for access:

304.(h).(1). Two (2) cross-channel public service announcement spots daily to promote community programs and the availability of community programming facilities and training;

304.(h).(2). All PEG access channels shall be listed on the electronic program guide (EPG) and in printed materials describing or listing channels on the system;

304.(h).(3). Insertion at no charge in at least two (2) bill stuffers annually for promoting the designated entity's service or generally promoting community programming, which bill stuffers shall be produced by the designated entity and shall conform to the company's standards and policies for size and weight. Any bill stuffer denigrating the company, its service or its programming is not permitted.

304.(h).(4). Distribution of the designated entity's newsletter to the company's employees.

304.(i). The designated entity responsible for public access shall indemnify, keep and save the city and company free and harmless from any or all claims (other than claims for which the company may enjoy immunity under 47 U.S.C. Section 558) arising out of the designated entity's actions or omissions, or its PEG programming operations, to the extent the claims are not attributable to the acts or omissions or operations of the party seeking indemnification. Subject to the foregoing, in the event that suit shall be brought or recourse or damages sought against either the city or the company, the designated entity shall defend and indemnify the city and/or the company and pay any judgments or damages with all costs. The indemnity is conditioned on the party seeking indemnification tendering notice to the designated entity of any proceeding asserting claims for which it may seek indemnity within ten (10) days of the date the party seeking indemnification receives notice of such proceeding. The party seeking indemnification may participate by its own counsel in any action against it, but at its own expense. The city may require the designated entity to obtain liability or other insurance in the city's discretion.

304.(j). Payments made under this agreement by the company in one (1) calendar year do not have to be spent in that calendar year. References to the designated entity

include any successor to the designated entity. An entity that is a designated entity may only hold and use the resources, equipment, facility and funds provided for under the franchise for so long and to the extent it is a designated entity, and must transfer resources, equipment, facilities and funds to its successor upon request of the city.

304.(k). For any period or for any channel where there is no designated entity, the city, at its option and after notifying the company in writing, shall act and enjoy all rights and responsibilities as if it were the designated entity.

Section 305. Free drops to subscriber network.

305.(a). In addition to providing the institutional network drops required by this franchise, the company shall:

305.(a).(1). Continue to provide a free drop to the subscriber network and free basic and expanded basic service to each public and private school, public library branch, police and fire station, community center and public building and to such other institutions as have been requested by the city, where the drop and service had been provided prior to December 1, 1997;

305.(a).(2). Provide a free drop to the subscriber network and free basic and expanded basic service to each public and private school, public library branch, police and fire station, community center and public building that requests a drop in writing, and to such other institutions as the city may reasonably request from time to time. Where a drop requested under this section 305(a)(2) would require the company to install a drop longer than four hundred (400) feet in length measured from the closest street, the company may charge the location for the cost of the labor and materials required to extend the drop beyond the four hundred (400) feet.

305.(b). The company is only required to provide a single free drop to the subscriber network, to a single outlet at a point within the location selected by that location. However, the location may extend the drop to multiple outlets and receive free basic and expanded basic service at each outlet so long as such extension does not result in any violations of leakage standards which the company is obligated to meet. A location that wishes to install multiple outlets may do so itself, or may contract with the company to do so.

Section 306. Support not franchise fees.

The parties agree that any cost to the company associated with providing any support for PEG use required under this franchise (including the provision of the institutional network and support therefor) and payments made outside this franchise, if any, are not part of the franchise fee, and fall within one (1) or more of the exceptions in 47 U.S.C. § 542.

Section 307. Research and development.

The company shall, on an ongoing basis, conduct research and development with regard to improvement of existing services, provision of new services and enhancement of system capabilities.

Section 308. Company rules and regulations.

The company 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 the company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state, federal or local laws, rules and regulations. Any rules or regulations promulgated pursuant to this section shall be published at the company's expense. After the adoption of such regulations, the company shall file with the city clerk and with the cable communications officer copies of all rules and regulations which shall be available for public inspection.

ARTICLE IV. CABLE SYSTEM CONSTRUCTION

Section 400. Construction plan, and construction procedures.

400.(a). The construction plan that the company is required to submit pursuant to Article III and Exhibit A shall be made available for public inspection during normal business hours at the main local office of the company at the company's expense.

400.(b). Nothing in this section shall prevent the company from constructing the system earlier than planned. However, any delay in the system construction beyond the times specified in Exhibit A shall require application to and consent by the city. The city may not arbitrarily withhold consent for delay when the company has shown good cause for such delay; provided, however, that the city may attach reasonable conditions to ensure performance. Good cause for delay shall be presumed when the company shows, to the satisfaction of the council, that such delay is beyond its reasonable control and that it has taken all reasonable steps to avoid the delay. The company shall notify the city as soon as possible of any anticipated or actual delay.

400.(c). Delays beyond the company's reasonable control include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Events within the control of the company include, but are not limited to, delays caused by the company's (or its parents') own acts or failures to timely act or plan for action.

400.(d). Construction in accordance with Article III and Exhibit A shall commence as soon as is reasonably possible after this franchise becomes effective pursuant to Article I, section 107 of this ordinance. Failure to proceed expeditiously shall be grounds for revocation of this franchise. Failure to proceed expeditiously shall be presumed in the event that the company fails to meet the deadlines established in Exhibit A.

Section 401. New development under-grounding.

401.(a). In cases of new construction or property development where utilities are to be placed underground, the company must place its facilities underground at the time of such construction or development, so long as the developer, utility or property owner shall give the company reasonable written notice of such construction, or development, and of the particular date on which open trenching will be available for the company's installation of conduit, pedestals and/or vaults, and laterals to be provided at the company's expense.

401.(b). The company shall provide specifications as needed for trenching when requested to do so, and shall maintain a current copy of the specifications that it is providing with the cable communications officer.

401.(c). Costs of trenching and easements required to bring service to the development shall be a matter to be negotiated between the developer, utility or property owner and the company.

Section 402. System construction procedures.

402.(a). The cable system shall be constructed, operated and maintained in accordance with all applicable codes of the city governing the use of the streets and other public property. Without limiting the company's obligations thereunder, the company agrees that, at a minimum, it will follow the system construction procedures established by this franchise, including by way of example and not limitation, the requirements of this Article IV. No requirement in this franchise shall be read to limit or condition any of the obligations of the company under applicable law or Chapter 430. It is the duty of the company to construct, operate and maintain its cable system, and to move and relocate its facilities, so that the city is not required to bear any costs or delays as a result of the cable system's occupation of the streets or other public property, so that the public is not discommoded, and so that the use of the streets or other public property by the city and by others is not impeded. It is the duty of the company to repair any damage caused to the streets or public property promptly to specifications of the city or other responsible authority and to compensate the property owner for any loss. It is likewise the duty of the company to repair promptly any damage caused to private property and to compensate the private property owner for any loss. Unless expressly provided

otherwise, costs associated with complying with this section and with applicable law shall be borne by the company, and with no cost to the city. If there is a conflict between the procedures applicable under other provisions of the Legislative Code and the requirements of this franchise with respect to the use of the streets or other public property, the provision that the city determines best protects it shall control.

402.(b). Within six (6) months of the effective date of this franchise, the company shall begin applying for all necessary governmental permits, franchises, certificates and authorizations. Neither the review of plans by the city nor the granting of any franchises, permits, certificates, authorizations, approvals, etc., shall be construed as a guarantee or warranty by the city of the company's cable system. The company shall not assert the fact that the city has performed any prior review of its plans or exercised any ministerial function in granting permits, franchises, certificates, authorizations, approvals, etc., as a defense against its obligations to indemnify and hold the city harmless pursuant to Article I, section 118. The company shall furnish all plans, drawings and technical data in sufficient detail so as to enable each city department to fulfill its obligations under this franchise and other applicable laws and regulations.

402.(c). The company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, state law and any detailed standards submitted by the company and approved by the city as part of the system design process described in Exhibit A. Within six (6) months of the effective date of the franchise, the company shall provide the city with three (3) copies of a construction practices manual. The company will be obligated to comply with the manual, except insofar as complying with the manual would conflict with the company's obligations under this franchise or other applicable law, or the city otherwise disapproves of a practice. The city's failure to comment upon the manual or any particular practice is not an approval of the manual or a particular practice.

402.(d). Construction, operation and maintenance of the cable system in the city shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple-cable configurations shall be arranged in parallel, and bundled with due respect for engineering considerations.

402.(e). The company shall at all times comply with:

402.(e).(1). National Electrical Safety Code as prepared by the Institute of Electrical and Electronics Engineers;

402.(e).(2). National Electrical Code of the National Fire Protection Association;

402.(e).(3). Bell Telephone System's Code of Pole Line Construction, also known as Bell System Manual of Construction Procedures; and

402.(e).(4). Other applicable federal, state and local law provisions.

402.(f). In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the company may have equipment located.

402.(g). Any antenna structure used in the cable system shall comply with construction, marking and lighting of antenna structures required under applicable law.

402.(h). All working facilities and conditions used during construction, operation and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.

402.(i). The company shall comply with all applicable standards for RF signal leakage.

402.(j). Upon grant of this franchise to construct and maintain a cable system to provide cable service in the city, the company may enter into contracts with any public utility companies or any other owner or lessee of any poles located within or out of the city to whatever extent such contract or contracts may be expedient and of advantage to the company for use of poles and posts necessary for proper installation of the system, obtain right-of-way permits from appropriate state, county and federal officials

necessary to cross highways or roads under their respective jurisdiction to supply main trunk lines from the company's receiving antennas, obtain permission from Federal Aviation Administration to erect and maintain antennas suitable to the needs of the system and its subscribers and obtain whatever other permits a city, county, state or federal agency may require. In the construction, installation and maintenance of its system, the company will use steel, cable and materials and electronic devices, all of specialized and advanced design and type. In the operation of its system, the company will employ personnel with training, skill and experience in electronics and communications.

402.(k). The company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the city may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

402.(l). The company shall utilize existing poles, conduits and other structures whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other structures whether in the streets, on public property or on privately owned property until the written approval of the city is obtained. However, no location of any pole or wire-holding structure or other facility of the company shall be a vested interest and such poles or structures or facilities shall be removed or modified by the company at its own expense whenever the city or any person acting on the city's behalf determines that the public or the city's convenience would be enhanced thereby.

402.(m). All transmission and distribution structures, lines and equipment and all other parts of the cable system shall be constructed, operated and maintained so as to cause minimum interference with the proper use of streets and other public property, and to cause minimum interference with the rights or reasonable conveniences of property which adjoins any of the said streets, or other public property.

402.(n). In case of any disturbance of any street, pavement, sidewalk, driveway, foundation or other surfacing, the company shall, at its own cost and expense and in a manner approved by the city, replace and restore the same to as good condition as before said work was commenced and in accordance with standards for such work set by the city. If, upon reasonable written notice, the company fails to promptly restore any street or other public property in accordance with this provision, the city shall have the right to put such street or public property back into good condition at the expense of the company and the company shall, upon demand, pay to the city the cost of such work done or performed by the city.

402.(o). In case of any disturbance of any other public property not included in the scope of subsection 402(n), the company shall, at its own cost and expense and in a manner approved by the city, replace and restore all such property to as good condition as before said work was commenced and in accordance with standards for such work set by the city. If, upon reasonable written notice, the company fails to promptly replace and restore any such property in accordance with this provision, the city shall have, in addition to such other rights as it may have under this franchise, the right to replace or restore such public property to at least as good condition as existed prior to the damage at the expense of the company and the company shall, upon demand, pay to the city the cost of such work done or performed by the city.

402.(p). In case of any disturbance of any private property, the company shall, at its own cost and expense replace and restore all such property to as good condition as before said work was commenced and in accordance with any applicable standards for such work set by the city. If, upon reasonable written notice, the company fails to promptly replace and restore any such property in accordance with this provision, the property owner shall have, in addition to such other rights as it may have under law or equity, the right to replace or restore such private property to at least as good condition as existed prior to the damage at the expense of the company and the company shall,

upon demand, pay to the owner the reasonable cost of such work done or performed by the owner.

402.(q). Whenever the city shall, during the period of this franchise, undertake any public improvement which affects the cable system, it shall direct the company to remove or relocate its wires, conduits, cables, vaults, pedestals, manholes, poles and other fixtures and property from the area affected by the improvements at the company's expense, upon reasonable notice to the company of the undertaking of such public improvements. Likewise, the company at its expense shall protect, support, temporarily disconnect, relocate, or remove any property of the company when, in the opinion of the city the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation or movement of structures by governmental agencies whether acting in a governmental or a proprietary capacity, including but not limited to movement of buildings, urban renewal and redevelopment, and any program under which the city shall undertake to cause all such properties to be located beneath the surface of the ground, street vacation, or for any other reason where the convenience of the city or the public would be served thereby. If the company fails to move its facilities by a time specified by the responsible government authority, that authority may perform the work, and bill the company therefor.

402.(r). Notwithstanding the foregoing, whenever, in case of fire or other emergency, it becomes necessary to remove any of the company's facilities, the city may do so without prior notice.

402.(s). The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone facilities or obstruct or hinder in any manner the various utilities serving the residents of the city. All such poles or other fixtures shall be placed close to the line of the lot abutting on said street, and then in such manner as not to interfere with the usual travel on said streets.

402.(t). The company shall promptly move and relocate its cable system for any private party authorized to occupy the streets or other public property to accommodate the construction, operation or maintenance of facilities by such party. Costs shall be borne as provided by applicable law.

402.(u). The company shall, on the request of any person holding a building moving permit or other permit for moving oversized objects issued by the city, temporarily raise or lower its wires to permit the moving of the buildings or objects. The reasonable expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, if the system is properly installed and the company shall have the authority to require such payment in advance. The company shall be given not less than ten (10) working days' advance notice to arrange for such temporary wire changes. In constructing, operating and maintaining its cable system, the company shall respect any and all building movers corridors on truck routes established by the state, the city and any of their subdivisions or agencies.

402.(v). The company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the city. The city shall have the right to do the trimming requested by the company and may charge the company for the city's direct costs for such trimming. Regardless of who performs the work requested by the company, the company shall be responsible, shall defend and hold the city harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

402.(w). The company shall erect and maintain all parts of the system in good condition throughout the entire franchise period.

402.(x). All necessary easements over and under private property shall be arranged for by the subscribers or the company.

402.(y). The company shall render efficient service, make repairs and adjustments promptly, and interrupt service only for good cause and for the shortest time possible. It is understood that during the upgrade there may be more necessary interruptions of service. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use. All costs incurred in making such repairs and adjustments shall be borne by the company except as otherwise provided for in this ordinance.

402.(z). The company shall provide to each subscriber a statement in layman's language of the quality of signal to be expected by the subscriber.

402.(aa). The company shall not allow its cable or other operations to interfere with broadcast reception of persons not served by the company.

Section 403. Installation services.

403.(a). The company shall provide at least the following installation services:

403.(a).(1). *Standard installation.* Standard installation for the subscriber network shall consist of an aerial drop, not exceeding two hundred (200) feet, from a single pole attachment to the customer's residence. The use of exposed (external) wiring is the standard method of wiring all buildings.

403.(a).(2). *Project prewiring:*

(A). The company shall provide service to prewired projects and utilize the cabling provided for the prewired projects as required by Article I, section 111.

(B). The company shall review and approve methods and materials, supply specifications, technical assistance and material according to Article I, section 111.

(C). The company shall prewire a project upon request according to Article I, section 111.

403.(a).(3). The company shall provide additional outlets as customers may request, but subscribers shall also have the option of installing additional outlets themselves. However, this section does not require the company to connect to wiring that would result in signal leakage in excess of the limits under applicable law.

Section 404. Books and records; inspection of system; testing requirements.

404.(a). The company shall provide the city access to all books and records, as required by Chapter 430. Without limiting its obligations under that chapter, or other provisions of applicable law, the company agrees that it will provide the city access to all books and records related in whole or in part to the construction, operation, or repair of the cable system so that the city may inspect and copy these books and records. The company's obligation includes the obligation to produce all books and records related to revenues derived from the operation of the cable system. The company is responsible for obtaining or maintaining the necessary possession or control of all such books and records related to the construction, operation or repair of the cable system so that it can produce the documents upon request, without regard to whether the books and records are held by it, a parent company, a contractor or subcontractor, or someone else. Books and records must be maintained for a period of five (5) years, except that (a) any record that is a public record must be maintained for no less than the period required by state law; and (b) the city may from time to time specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The company shall take all reasonable steps required, if any, to ensure that it is able to provide the city all information which must be provided or may be requested under this franchise or applicable law, including by providing appropriate subscriber privacy notices. The company shall be responsible for redacting any data that applicable law prevents it from providing to the city. Nothing in this section 404 shall be read to require the company to violate state or federal law protecting subscriber privacy or personnel records.

404.(b). The terms "books and records" shall be read expansively to include information in whatever format stored. The term "construction, operation and repair" shall be read expansively, including by way of example and not limitation, information related to

system management, contractual relationships with subscribers and other entities located in the streets, and information related to the use of the cable system.

404.(c). Books and records requested shall be produced to the city at the location designated by the cable communications officer. However, if any books and records are too voluminous, or for security reasons (for example, because the documents contain trade secrets) cannot be copied and moved, then the company may request that the inspection take place at some other location mutually agreed to by the city and the company, provided that (1) the company must make necessary arrangements for promptly copying documents selected by the city after its review and providing them to the city; and (2) the company must pay all travel and additional copying expenses incurred by the city (above those that would have been incurred had the documents been produced in the city) in inspecting those documents or having those documents inspected by its designee.

404.(d). The company shall file promptly with the city a copy of any document the company files with the FCC, the Securities and Exchange Commission or any other regulatory agency with jurisdiction pertaining to the system. To the extent that such documents contain, to the satisfaction of the city, the information required by other reports hereunder, the city may suspend the requirements to file such other reports with the city so as to avoid duplication and the administrative costs attendant thereto. Alternatively, the company may comply with this section 404(d) by providing the city a list and short description of the documents it files, and providing copies of the documents upon request. The list must be kept current.

404.(e). Without limiting the foregoing, the company shall provide the city the following within ten (10) days of their receipt or (in the case of documents created by the company or an affiliate) filing:

404.(e).(1). Notices of deficiency or forfeiture related to the operation of the cable system (other than notices issued by the city); and

404.(e).(2). Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the company or by any partnership or corporation that owns or controls the company directly or indirectly.

404.(f). The cable communications officer may require the company to maintain records, and to prepare reports relevant to determining the compliance of the company with the terms and conditions of this franchise or applicable law. Without limiting this general obligation, the company shall prepare the following reports:

404.(f).(1). On or before March 1 of each year, the company shall provide:

(A). A copy of updated maps depicting the location of all cable plant, to standard scale and with appropriate tick marks. These maps shall be accompanied by a digital copy in a standard format and medium as directed by the city engineer. Copies of maps should reflect the location of plant as-built.

(B). A report detailing the company's performance under each applicable customer service standard as defined by FCC rules, Chapter 430 and regulations adopted pursuant thereto, and this franchise. By way of example, if the company is required to answer telephones within thirty (30) seconds ninety (90) percent of the time, the report shall state what percentage of the time the company answered the phone within thirty (30) seconds. For each standard not met, the report will explain the cause, and corrections taken for each.

(C). An estimate of the number of handicapped, senior citizens or economically disadvantaged persons receiving any rate discounts, and the amount of the discounts.

(D). A statement certified as true by an independent auditor or the chief financial officer for the company (i) listing by category the revenues for each source of revenue which is included within the definition of gross revenues in this franchise, and (ii) identifying any other revenues of the cable system that the company has excluded from gross revenues; the amount of the exclusion; and the reason for the exclusion.

(E). A projected income statement and statement of projected construction for the next two (2) years. Provided that, the company at its option may provide the projected income statement for review and not for copying.

(F). A list of officers and members of the board of directors of the company and its parents.

(G). A list of stockholders holding five (5) percent or more of the voting stock of the company or its parents.

(H). A copy of the company's annual report and those of its parents and subsidiaries.

(I). A full schedule of all subscriber and user rates, fees and charges for all cable services provided.

(J). A copy of subscriber and user agreements used by the company.

(K). Provided that, when it provides the information required by subsections (I) and (J), a company need not include proprietary MDU rates and agreements, so long as the same are made available for the city's inspection upon request. *Provided further*, once it provides the information required by (G) and (H), the company need only file the lists if the officers, members or stockholders change.

404.(f).(2). The company shall annually provide the following special reports by March 31:

(A). An annual opinion survey report which identifies subscriber satisfaction/dissatisfaction with cable services offered by the company. Surveys required to make said report shall be scientifically valid.

(B). An annual plant survey report, which shall be a survey of the company's plant and a full report thereon including new construction. The purpose of the report is to assure the city that the plant is being operated and maintained in accordance with applicable law. Said report shall include but not be limited to an appropriate engineering evaluation and shall be conducted in conformance with standard engineering practices. The first report required under this franchise shall be due on March 31, 2001.

404.(f).(3). Within one (1) month of the end of each quarter, which shall end on March 31, June 30, September 30, and December 31 of every year, the company shall provide:

(A). A statement, in a form approved by city, showing the number of subscribers served in the entire system and in the franchise area; and the number of channels on each tier; and any annexations that occurred since the previous reporting period. In addition, the statement shall identify all services being provided over the cable system (including any noncable services), and particularly identify any services begun or discontinued. A lease of system capacity will be treated as a service for purposes of the preparation of this report. The statement will also identify the end-user equipment being used by subscribers, listing the number of end-user devices being used by subscribers, by category.

(B). A statement certified as true by an independent auditor or the chief financial officer for the company (i) listing by category the revenues for each source of revenue which is included within the definition of gross revenues in this franchise, and (ii) identifying any other revenues of the cable system that the company has excluded from gross revenues; the amount of the exclusion; and the reason for the exclusion.

(C). A report summarizing known cable system outages in the franchise area, and an estimate of the number of subscribers affected by the outage, and the time it took to repair the outage, measuring from the time the company first knew about the outage. An outage is defined as a loss of audio or video or impairment of audio or video affecting more than one (1) subscriber.

(D). A report showing the percentage of time service interruptions were cured within thirty-six (36) hours; the average time from notice that a problem existed to final cure; and the percentage of time that other service calls were resolved within ninety-six (96) hours.

- (E). A summary by category of complaints, identifying the number and nature of complaints.
- (F). The percentage of time standard and nonstandard installations were completed within the time required by the city.
- (G). For each month during the quarter, a form of actual subscriber bill showing how the company is itemizing franchise fees, and taxes, and how it is itemizing costs, together with copies of all other information, offers and notices sent to subscribers as a group.
- 404.(g). The company shall provide the city the following on an ongoing basis:
- 404.(g).(1). A statement of the resolution of complaints referred to it by the city.
- 404.(g).(2). The company shall provide the city with a special number that the city may call to obtain information about any unplanned or unanticipated outage. This number cannot be the same number used by general subscribers, and must provide a means for the city to promptly contact a person knowledgeable about the outage.
- 404.(g).(3). The company shall provide the city with at least a twenty-four-hour advance notice of any planned outages affecting five hundred (500) or more subscribers on the same distribution line or fiber node within the franchise area.
- 404.(h). The company shall maintain records of all complaints received, the disposition of those complaints, and the time from disposition to any cure.
- 404.(i). The company shall maintain accurate and detailed maps and improvement plans which show the location, size, and a general description of all facilities installed in the streets and any power supply sources (including voltages and connections). Maps shall be based upon post-construction inspection to verify location. The company shall provide a map to the city showing the location of its facilities, in such detail and scale as may be directed by the city engineer. New system maps shall be promptly submitted to the city when the facility expands or is relocated. Copies of maps shall be provided on disk, in a commercially available electronic format specified by the city engineer. The company shall keep current records and plats on all underground facilities it owns or operates. Such plats and records are to be available to all utilities and the city immediately upon request.
- 404.(j). The company shall maintain accurate subscriber and institutional network drawings which show the location of all facilities, and it must provide those drawings upon request in hard copy and in a commercially available electronic format specified by the cable communications officer.
- 404.(k). The cable system and all property owned or used by the company in connection with the system shall be subject to inspection and testing by the city to determine compliance with the provisions of this ordinance and applicable law. The city shall be notified two (2) weeks in advance of, and shall have the right to be present when the cable system is tested by the company for any required proof of performance test, or any test that the company is required to perform under section 404(m). The city shall have the right to be present for any other test, upon request. The company must respond to requests for information regarding its system and plans for the system as the city may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.
- 404.(l). If, based on complaints received or upon its own inspection, the cable communications officer concludes that there is reason to believe that the system may not be performing as required, it may require the company to perform tests and inspections of its system, and to prepare a report showing the results of the inspection or testing, and any corrective action taken as a result thereof.
- 404.(m). Except to the extent that federal law prevents the company from enforcing this requirement, the company shall be required to test its cable system periodically for compliance with all applicable technical and performance standards. The tests shall be conducted at least twice each year, shall be conducted by trained personnel using

properly calibrated and tested equipment, and accepted engineering testing procedures designed to measure performance under the worst case scenarios.

404.(n). In addition, the company shall provide the city with the results of the company's proof of performance tests conducted pursuant to FCC standards and requirements. The company shall provide the city with credentials of person or persons conducting said tests.

404.(o). All costs of testing shall be borne by the company. Where special testing is required to determine the source of technical difficulties, the company shall be liable for all the costs thereof.

404.(p). The company must produce the books and records, prepare the reports and permit the city to conduct the inspections requested by the city even if the company does not believe that the request satisfies the standard set out in this section 404, unless the city waives the requirement, or the company obtains a court order from a court of competent jurisdiction enjoining the request.

404.(q). Any material misrepresentation made by the company in any report required by this section shall subject the company to the liquidated damages provisions of this ordinance and shall subject the company to all remedies available to the city by law.

Section 405. Miscellaneous.

405.(a). By the acceptance of this franchise, the company waives its rights, if any, to relocation costs that might otherwise be provided by law and that would otherwise be available from the city or in connection with any project in which the city is a participant.

405.(b). The rights granted to the company pursuant to Appendix H shall be deemed terminated upon the effective date of this franchise. Provided, however, the company shall remain liable for all acts and omissions under the prior franchise, and remains obligated to indemnify the city and maintain insurance as required by the franchise to protect the city and its citizens against harms arising from the company's acts and omissions under that franchise, and to pay all amounts owed and unpaid.

405.(c). All remedies are cumulative and may be exercised singly or in combination, and are in addition to any other remedies available to the city at law or equity.

405.(d). Material terms are not severable.

405.(e). The company shall maintain an unconditional guarantee from US WEST, Inc. (to be renamed MediaOne Group, Inc.) in the form attached to the agreement dated April 15, 1998, for the term of this franchise. The city will not approve any transfer until and unless a substitute guarantee is provided by the transferee's parents.

ACCEPTANCE

Company accepts and hereby agrees to be bound by all the terms and conditions of this franchise.

Date: .