

**CABLE COMMITTEE  
CITY HALL CONFERENCE ROOM  
APRIL 6, 2016  
6:00 P. M.**

**AGENDA**

- I. CALL TO ORDER
- II. CONSENT AGENDA
  - A. Minutes (page 1)
- III. NEW BUSINESS
  - A. Election of Officers (page 3)
  - B. Meeting Schedule (page 4)
  - C. City Web Site Policy (page 5)
  - D. Review Operating Rules (page 6)
  - E. Review Franchise Agreement (page 9) – Mediacom will be negotiating a new agreement in 2016.
- IV. OLD BUSINESS
  - A. Equipment Report
  - B. Social Media Specialist Report
- V. INFORMATIONAL
- VI. ADJOURN

**\*\*\*Please contact Renee Eckerly if you can't attend the meeting at  
renee@paynesvillemn.com.\*\*\***

**Voting Members: Harry Thielen, Bev Mueller, Donovan Mayer, Marv Niedan, and Brett Bungum. Advisory Members: Renee Eckerly and Jolyn Lindquist.**

This agenda has been prepared to provide information regarding an upcoming meeting of the Paynesville Cable Commission. This document does not claim to be complete and is subject to change.

**BARRIER FREE:** All Paynesville Cable Commission meetings are accessible to the handicapped. Attempts will be made to accommodate any other individual need for special services. Please contact City Hall (320) 243-3714 early, so necessary arrangements can be made.

## REQUEST FOR COMMITTEE/COUNCIL ACTION

**COMMITTEE/COUNCIL NAME:** Cable Committee

Committee/Council Meeting Date: April 6, 2016

Agenda Section: Consent

Originating Department: Administration

Item Number: II - B

**ITEM DESCRIPTION:** Minutes

Prepared by: Staff

**COMMENTS:**

Please review the attached minutes of the April 2, 2014 Cable Committee meeting.

**ADMINISTRATOR COMMENTS:**

**COMMITTEE/COUNCIL ACTION:**

A motion to approve the minutes of the April 2, 2014 Cable Committee meeting.

**MINUTES  
CABLE & TECHNOLOGY COMMISSION**

**APRIL 2, 2014**

Vice Chairperson Brett Bungum called the meeting to order at 6:00 p.m. Members present were Marv Niedan, Harry Thielen, Renee Eckerly, City Administrator; and Donovan Mayer. Bev Mueller, Jolyn Lindquist, Social Media Specialist; and Harry Thielen were absent. Rudy Vigil was also in attendance.

Eckerly announced the new Social Media Specialist being Jolyn Lindquist.

**Motion was made by Niedan to approve the minutes from the October 2, 2014 meeting. Seconded by Bungum and unanimously carried.**

**ELECTION OF OFFICERS**

**Motion was made by Niedan to elect Mueller as Chairperson, Bungum as Vice Chairperson, and Eckerly as Secretary. Seconded by Mayer and unanimously carried.**

**MEETING SCHEDULE**

**Motion was made by Niedan to keep the Cable Committee meeting schedule the same. Seconded by Mayer and unanimously carried.**

**EQUIPMENT REPORT**

Eckerly reported on the equipment that has been purchased to upgrade the cable equipment. Vigil showed the Commission examples of the cameras, mixer, and other equipment that Willmar has from pictures. The estimated cost is \$14,000.00 for a mixer, 4 cameras, all cables, and amplifiers. The video server is \$8,882.00 which includes support and shipping. The Commission discussed that the server would replace the VHS decks and the DVD drive. Churches would email the files that they want played. City staff would need to make sure that the churches have the right software to make the file, if the churches don't the City can download the software for them. The Committee discussed live streaming on the website and You Tube. The City's website would need work to make sure the band width is fast enough so the streaming doesn't pause. Staff would work with Gov. Office on this. Vigil is going to help the City set up the You Tube to put the Council meetings out on the internet. The City of Willmar uses Ustream.

**Motion was made by Niedan to purchase the video server for \$8,882.00 from AV Solutions from the proposal dated January 8, 2014 and recommend such to the City Council. Seconded by Bungum and unanimously carried.**

There being no further business, the meeting was adjourned at 6:30 p.m.

2

**REQUEST FOR COMMITTEE/COUNCIL ACTION**

**COMMITTEE/COUNCIL NAME:** Cable Committee

Committee/Council Meeting Date: April 6, 2016

Agenda Section: New Business

Originating Department: Administration

Item Number: III - A

**ITEM DESCRIPTION:** Election of Officers

Prepared by: Staff

**COMMENTS:**

Nominations for Chairperson.

Nominations for Vice Chairperson.

Nominations for Secretary.

**ADMINISTRATOR COMMENTS:**

Current Officers:

Chair – Bev Mueller

Vice Chair – Brett Bungum

Secretary – Renee Eckerty

**COMMITTEE/COUNCIL ACTION:**

A motion to elect \_\_\_\_\_ as Chairperson.

A motion to elect \_\_\_\_\_ as Vice Chairperson.

A motion to elect \_\_\_\_\_ as Secretary.

**REQUEST FOR COMMITTEE/COUNCIL ACTION**

**COMMITTEE/COUNCIL NAME:** Cable Committee

Committee/Council Meeting Date: April 6, 2016

Agenda Section: New Business

Originating Department: Administration

Item Number: III - B

**ITEM DESCRIPTION:** Meeting Schedule

Prepared by: Staff

**COMMENTS:**

Every year at this time each Committee sets their yearly meeting schedule. The Committee meets bi-annually in April and October- the first Wednesday at 6:00 p.m.

**ADMINISTRATOR COMMENTS:**

**COMMITTEE/COUNCIL ACTION:**

A motion to set the Cable Committee meetings for \_\_\_\_\_.

4



TO: Paynesville Cable Committee  
FROM: City Administration  
SUBJECT: City Web Site Policy  
DATE: December 5th, 2014

### **City of Paynesville's Web Page Policy**

As a service to the residents of the City of Paynesville, the City has a "Community Information" section on the City's web page. That information includes, but is not necessarily limited to Community Services (churches, youth activities, senior services, library, etc.), DMV information, Dog & Cat licensing information, Recycling information, Utilities information (electric, water, telephone, television, etc.) and yard waste. It also includes area maps, community services, a local business directory, area history, voter information, links to other web sites of local interest as well as City services.

The amount of space available on the City's web site is limited and the City does not want to overwhelm visitors to the City web site with superfluous information. Accordingly and pursuant to Subdivision 6 of Minnesota Statute 10.60, the City's policy for listing a business, organization or other entity on the City of Paynesville's web site includes the following criteria:

The business, organization or entity shall:

1. Have a physical presence within the City of Paynesville of the immediate area, and/or
2. Already provide a service to a significant portion of the Paynesville area, and/or
3. Be licensed or franchised by the City of Paynesville, and/or
4. Be a service organization with a significant number of Paynesville area residents as members, and/or
5. Be a governmental or quasi-governmental entity that serves Paynesville or the greater Paynesville area.

The City reserves the right to make exceptions to the five criteria noted above and also reserves the right to remove a listing from the City's web site for any or no reason.

**OPERATING RULES FOR  
PAYNESVILLE PUBLIC ACCESS CHANNEL 8 & 3**

**1. PUBLIC ACCESS**

- A. Public access channel space shall be available at no charge to any person, group, organization, or other entity on a first come, nondiscriminatory basis upon request and consistent with the availability of the access channel at the time and for the duration requested.
- B. No program, production, or presentation shall be cablecast which involves any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office), lottery information, or obscene or indecent matter.
- C. In order to permit diversity of use among public access cablecasters, the City of Paynesville may limit the use of cablecasting facilities by any one applicant to two hours during any calendar week.

**2. EDUCATIONAL ACCESS**

- A. Educational access channel space shall be available at no charge to the Paynesville Public School District consistent with the availability of the access channel at the time and for the duration requested.
- B. No program, production, or presentation shall be cable cast which involves any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office), lottery information, or obscene or indecent matter.
- C. In order to permit diversity of use among public access cablecasters, the City of Paynesville may limit the use of cablecasting facilities by any one applicant to two hours during any calendar week.

**3. GOVERNMENT ACCESS**

- A. Governmental access channel space shall be available at no charge to the City of Paynesville and Paynesville Township and their departments consistent with the availability of the access channel at the time and for the duration requested.
- B. No program, production, or presentation shall be cablecast which involves any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office), lottery information, or obscene, or indecent matter.
- C. In order to permit diversity of use among public access cablecasters, the City of Paynesville may limit the use of cablecasting facilities by any one applicant to two hours during any calendar week.

4. **WAIVER**

- A. The City of Paynesville may, in its discretion, waive any of the above requirements in circumstances for which the nature of the cablecast warrants such a waiver.

5. **CABLECASTING**

- A. A prerecorded DVD may be supplied to the City for showing on the access channel. Whoever is requesting the airing of the DVD or public message will need to indicate the start and stop dates.
- B. The City reserves the right to review the content of all DVD's submitted for cablecasting to ensure compliance with FCC rules, and all other federal, state, and local standards. DVD's produced by community residents are not expected to meet broadcast television standards; however, those DVD's, which do not maintain a stable video signal, will not be cablecast.
- C. The City assumes no responsibility for damages to DVD's furnished by the user. Furthermore, the City will not edit or alter the DVD's.
- D. No charge shall be made for the use of the access channel.
- E. Users are responsible for securing permission or clearance to use all copyrighted materials included in their program, and are solely held liable for any damages or charges resulting from such use of material in their program.
- F. In keeping with the access rules, the City will not cablecast programs which involve advertising, lottery, obscene or indecent matter or do not maintain a stable video signal and audio signal to ensure compliance with FCC rules, and all other federal, state, and local standards. The City reserves the right to review scheduled DVD's.
- G. There will be no paid commercial spots contained on any program cablecast on the access channel. Sponsorship of a program is limited to logo display at beginning and end of the program with name of sponsor only. No phone numbers, company services, products, etc., of for-profit sponsors can be mentioned in the sponsorship display or within the contents of the program. Non-profit service organizations, such as the American Heart Association are not considered as for-profit sponsors.
- H. Timely programs (governmental meetings, athletic events, etc.) must be cablecast as soon as possible after recording and every effort will be made to do so. The City reserves the right to preempt previously scheduled programs where there is a time limit, such as an election date, to cablecast programs, which must be cablecast before deadline date.
- I. Time slots will be allocated at the discretion of the program coordinator, provided that ample time remains for spontaneous and locally produced programming.

- J. To schedule a program it is essential to provide a total exact, accurate run time to ensure that programs begin and end on time. This effects the credibility of the channel.

6. **ELIGIBILITY**

- A. Eligible access users include residents of the City of Paynesville and Paynesville Township and members of employees or organizations, which serve the community. Any community resident may request channel time for the presentation of a program.
- B. Eligible users under 18 year of age must have a parent or legal guardian sign the user responsibility form acknowledging the adult accepts full responsibility for content.

**CABLE TELEVISION FRANCHISE ORDINANCE**

**FOR**

**MEDIACOM MINNESOTA LLC**

**AND**

**CITY OF PAYNESVILLE, MINNESOTA**

**August 19, 2002**

**Prepared by:**

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## TABLE OF CONTENTS

SECTION 1.SHORT TITLE AND DEFINITIONS .....	1
1. Short Title .....	1
2. Definitions .....	2
SECTION 2.GRANT OF AUTHORITY AND GENERAL PROVISIONS.....	5
1. Grant of Franchise.....	5
2. Grant of Nonexclusive Authority.....	5
3. Lease or Assignment Prohibited .....	6
4. Franchise Term .....	6
5. Previous Franchises .....	6
6. Compliance with Applicable Laws, Resolutions and Ordinances .....	6
7. Rules of Grantee .....	7
8. Territorial Area Involved .....	7
9. Written Notice.....	8
10. Subscriber Network Drops to Designated Building.....	8
11. Ownership of Grantee.....	9
SECTION 3.CONSTRUCTION STANDARDS.....	9
1. Registration, Permits, Construction Codes, and Cooperation.....	9
2. Written approval .....	9
3. Use of existing poles or conduits.....	10
4. Minimum Interference .....	10
5. Disturbance or damage .....	10
6. Temporary Relocation .....	11
7. Emergency .....	11
8. Tree Trimming.....	11
9. Protection of facilities.....	11
10. Installation records.....	11
11. Locating facilities.....	12
12. City's rights .....	12
13. Facilities in conflict.....	12
14. Relocation delays .....	13

15.	Interference with City Facilities.....	13
16.	Interference with Utility Facilities .....	13
17.	Co-Location .....	13
18.	Safety Requirements .....	13
SECTION 4.DESIGN PROVISIONS .....		14
1.	System Upgrade: Minimum Channel Capacity .....	14
2.	Interruption of Service .....	14
3.	Technical Standards .....	14
4.	Special Testing.....	15
5.	Drop Testing and Replacement.....	15
6.	FCC Reports .....	15
7.	Annexation .....	15
8.	Line Extension .....	16
9.	Nonvoice Return Capability .....	16
10.	Lockout Device.....	16
SECTION 5.SERVICE PROVISIONS .....		16
1.	Regulation of Service Rates.....	16
2.	Non-Standard Installations.....	16
3.	Sales Procedures .....	17
4.	Consumer Protection and Service Standards .....	17
5.	Subscriber Contracts .....	20
6.	Refund Policy .....	20
7.	Late Fees .....	20
8.	Local Office Policy .....	20
9.	Monthly Reports .....	20
SECTION 6.ACCESS CHANNEL PROVISIONS .....		20
1.	Grantee Support for PEG Access.....	20
2.	Compliance with Federal Law .....	21
SECTION 7.OPERATION AND ADMINISTRATION PROVISIONS .....		21
1.	Administration of Franchise .....	21
2.	Delegated-Authority .....	21

11

3.	Franchise Fee .....	21
4.	Not Franchise Fees.....	21
5.	Access to Records .....	22
6.	Reports and Maps to be Filed with City .....	22
7.	Periodic Evaluation.....	23
SECTION 8.GENERAL FINANCIAL AND INSURANCE PROVISIONS .....		23
1.	Performance Bond .....	23
2.	Letter of Credit.....	24
3.	Liability Insurance .....	26
4.	Indemnification .....	27
5.	Grantee’s Insurance .....	28
SECTION 9.SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE.....		29
1.	City’s Right to Revoke.....	29
2.	Procedures for Revocation.....	29
3.	Abandonment of Service.....	29
4.	Removal After Abandonment, Termination or Forfeiture.....	30
5.	Sale or Transfer of Franchise.....	30
SECTION 10.PROTECTION OF INDIVIDUAL RIGHTS .....		32
1.	Discriminatory Practices Prohibited .....	32
2.	Subscriber Privacy .....	32
SECTION 11.UNAUTHORIZED CONNECTIONS AND MODIFICATIONS.....		33
1.	Unauthorized Connections or Modifications Prohibited .....	33
2.	Removal or Destruction Prohibited .....	33
3.	Penalty .....	33
SECTION 12.MISCELLANEOUS PROVISIONS.....		33
1.	Franchise Renewal .....	33
2.	Work Performed by Others.....	33
3.	Amendment of Franchise Ordinance .....	33
4.	Compliance with Federal, State and Local Laws.....	33
5.	Nonenforcement by City.....	34
6.	Rights Cumulative .....	34

7.	Grantee Acknowledgment of Validity of Franchise .....	34
8.	Force Majeure .....	34
SECTION 13 PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS .....		35
1.	Publication, Effective Date .....	35
2.	Acceptance .....	35
EXHIBIT A	OWNERSHIP	
EXHIBIT B	GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT	
EXHIBIT B-1	SERVICE TO PUBLIC AND PRIVATE BUILDINGS	
EXHIBIT C	DESCRIPTION OF SYSTEM	
EXHIBIT D	FRANCHISE FEE PAYMENT WORKSHEET	
EXHIBIT E	CORPORATE GUARANTY	

ORDINANCE NO. 46

AN ORDINANCE GRANTING A FRANCHISE TO MEDIACOM MINNESOTA LLC TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF PAYNESVILLE, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY [IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, CHAPTER \_\_\_\_\_,]<sup>1</sup>; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

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

**STATEMENT OF INTENT AND PURPOSE**

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

**FINDINGS**

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

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

**SECTION 1. SHORT TITLE AND DEFINITIONS**

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance.

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<sup>1</sup> If City has adopted ROW Ordinance.

14

2. **Definitions.** For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.
- a. **“Applicable Laws”** means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.
  - b. **“Basic Cable Service”** means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
  - c. **“Cable Service”** or **“Service”** means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service or Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
  - d. **“Cable System”** or **“System”** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:
    - (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
    - (2) a facility that serves Subscribers without using any public Right-of-Way;
    - (3) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
    - (4) an open video system that complies with 47 U.S.C. § 653; or

- (5) any facilities of any electric utility used solely for operating its electric utility systems.
- e. “Channel” or “Cable Channel” means six (6) MHz of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.
- f. “City” means City of Paynesville, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
- g. “City Council” means the governing body of the City of Paynesville, Minnesota.
- h. “Class IV Cable Channel” means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.
- i. “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.
- j. “Drop” means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.
- k. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- l. “Franchise” or “Cable Franchise” means this ordinance and the regulatory and contractual relationship established hereby.
- m. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by the cable operator for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17.
- n. “Grantee” is Mediacom Minnesota LLC, its lawful successors, transferees or assignees.

- o. **“Gross Revenue”** means all revenue derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent, or person in which Grantee has financial interest of five percent (5%) or more, from the operation of its System within City including, but not limited to, all Cable Service fees, Franchise Fees, late fees, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue, Converter rental fees and Lockout Device fees. The term Gross Revenue shall not include any taxes on services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- p. **“Installation”** means the connection of the System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.
- q. **“Lockout Device”** means an optional mechanical or electrical accessory to a Subscriber’s terminal which inhibits the viewing of a certain program, certain Channel, or certain Channels provided by way of the Cable System.
- r. **“Normal Business Hours”** means those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.
- s. **“Normal Operating Conditions”** means those service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.
- t. **“Other Programming Service”** means information that a cable operator makes available to all Subscribers generally.
- u. **“Pay Television”** means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- v. **“Person”** is any person, firm, partnership, association, corporation, company, or other legal entity.
- w. **“Right-of-Way”** or **“Rights-of-Way”** means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place,

5

area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.

- x. "Right-of-Way Ordinance" means any ordinance codifying requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.
- y. "Service Area" or "Franchise Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- z. "Service Interruption" means the loss of picture or sound on one (1) or more cable Channels.
- aa. "Standard Installation" means any residential Installation which can be completed using a Drop of two hundred (200) feet or less.
- bb. "Subscriber" means any Person who lawfully receives service via the System. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.
- cc. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the obligations and comply with all provisions herein, shall be deemed a violation of this Franchise.
2. Grant of Nonexclusive Authority.
  - a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below facilities available to Grantee to the extent it is technically and economically feasible to do so.
  - b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

- c. This Franchise shall be nonexclusive, and City reserves the right to grant a use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service. The terms and conditions of any such grant of use of the Rights-of-Way shall be, when taken as a whole no less burdensome or more beneficial than those imposed upon Grantee pursuant to this Franchise.
  - d. The Grantee shall have authority to provide data services and Internet access services (“Information Services”) under this Franchise regardless of whether such services are ultimately determined under Applicable Law to be Cable Services, telecommunications services or some other category of service. The City and Grantee acknowledge that the laws regarding Information Services provided by a cable operator have not yet been clearly defined. The City hereby reserves all of its rights to regulate the provision of Information Services by Grantee.
3. Lease or Assignment Prohibited. No Person may lease Grantee’s System for the purpose of providing Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.5. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provision of Applicable Law.
4. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless sooner renewed, revoked or terminated as herein provided.
5. Previous Franchises. Upon acceptance by Grantee as required by Section 13 herein, this Franchise shall supersede and replace any previous ordinance granting a Franchise to Grantee.
6. Compliance with Applicable Laws, Resolutions and Ordinances.
- a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority, and eminent domain rights of City. This Franchise may also be modified or amended with the written consent of City and Grantee as provided in Section 12.3 herein.
  - b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within City, which may have the effect of superseding, modifying or amending the terms herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to

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

- c. In the event of any conflict between this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
- d. In the event any City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in this Franchise, Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
- e. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to City, in accordance with Section 2.9. City shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question. City will use all reasonable best efforts to ensure that no Right-of-Way ordinance provisions unduly slow Grantee's System rebuild unless necessary to address health safety and welfare concerns.

7. Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.

8. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as they exist from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted; provided, however, that Grantee shall only be required to extend Service beyond its present System boundaries pursuant to Section 4.8 hereof. Access to Cable Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or

newly developed areas. In no event shall the time period to construct and activate cable plant in annexed areas exceed nine (9) months from notice thereof by City to Grantee.

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

If to City:                   City administrator  
221 Washburne Avenue  
Paynesville, MN 56362-1697

If to Grantee:               Mediacom  
Vice President, Legal and Regulatory Affairs  
100 Crystal Run Road  
Middletown, NY 10941

With a copy to:           Regional Manager  
Mediacom Minnesota LLC  
P.O. Box 110  
1504 2nd Street Southeast  
Waseca, MN 56093

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

10. Subscriber Network Drops to Designated Building. Upon request, Grantee shall provide, free of charge, throughout the term of this Franchise, Installation of one (1) Subscriber network Drop, one (1) cable outlet, one (1) Converter, if necessary, and the highest level of Cable Service offered by Grantee excluding pay-per-view and pay-per-channel (premium) programming without charge to the institutions identified on Exhibit B-1 attached hereto and made a part hereof, and such other public or accredited educational institutions subsequently designated by City which are within three hundred (300) feet of the System. The City may request that an institution which is beyond three hundred (300) feet of the System receive Service and Grantee shall provide the Drop upon payment at the cost of Grantee's time and material in excess of three hundred (300) feet. Grantee shall have three (3) months from the date of City designation of additional institution(s) within three hundred (300) feet of the System to complete construction of the Drop and outlet unless weather or other conditions beyond the control of Grantee requires more time. The construction schedule for any other institution designated by the City shall be mutually agreed to by Grantee and City. This requirement shall not include any digital tier of services Grantee may offer unless and until such time as Grantee's digital programming reduces the amount of spectrum available for analog programming to less than approximately eighty (80) Channels of analog programming.

Additional Subscriber network Drops and/or outlets in any of the locations identified on Exhibit B-1 will be installed by Grantee at the cost of Grantee's time and material. Alternatively, said institutions may add outlets at their own expense, as long as such Installation meets Grantee's standards.

11. Ownership of Grantee. Grantee represents and warrants to City that the names of the shareholders, partners, members or other equity owners of the Grantee and any of the shareholders, partners, members and/or other equity owners of Grantee are as set forth in Exhibit A hereto.

### SECTION 3. CONSTRUCTION STANDARDS

1. Registration, Permits, Construction Codes, and Cooperation.
  - a. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.
  - b. Reimbursement paid through the permitting process is separate, and in addition to, any other fees included in the Franchise. Grantee, at the time of or prior to submitting construction plans, shall provide City with a description of the type of service to be provided by the Grantee in sufficient detail for City to determine compliance with the Franchise and Applicable Laws.
  - c. City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with the procedures established by the City administrator or his or her designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.
  - d. Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Law or this Franchise.
2. Written approval. Grantee shall notify City at least ten (10) days prior to the commencement of any construction in any Rights-of-Way. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

3. Use of existing poles or conduits.

- a. Grantee shall utilize existing poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures shall be removed or modified by Grantee at its own expense whenever City determines that the public convenience would be enhanced thereby.
- b. The facilities of Grantee shall be installed underground in those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost. If City requires utilities to bury lines which are currently overhead, and the City financially participates in said undergrounding, then the City will consider providing the same cost sharing to the Grantee.

4. Minimum Interference.

- a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- b. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.

5. Disturbance or damage. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into condition as good as that prevailing prior to Grantee's work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City's invoice therefor.

6. Temporary Relocation.

- a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary or less expensive for City.
  - b. Grantee shall, on request of any person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than five (5) days advance notice to arrange such temporary wire alterations.
7. Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City administrator, police chief, fire chief, public utilities director or public works director or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages.
8. Tree Trimming. Grantee shall have the authority to trim trees on public Rights-of-Way at its own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by City. Trimming of trees on private property shall require consent of the property owner. Any trimming of trees by the Grantee in the Rights-of-Way and public ways shall be subject to such regulation as the City administrator or other authorized official may establish to protect the public health, safety and convenience.
9. Protection of facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.
10. Installation records. Each Grantee shall keep accurate Installation records of the location of all facilities in the Rights-of-Way and public ways and furnish them to City upon request. Grantee shall cooperate with City to furnish such information in an electronic mapping format, if possible compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, Grantee shall provide City with Installation records in an electronic format, if possible compatible with the then-current City electronic mapping format showing the location of the underground and above ground facilities.

11. Locating facilities.

- a. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.
- b. City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.

12. City's rights.

- a. When City uses its prior superior right to the Rights-of-Way and public ways, Grantee shall move its property that is located in the Rights-of-Way and public ways, at its own cost, to such a location as City directs. Notwithstanding the foregoing, in the event the public project is paid for totally or in part by non-public funds, then Grantee's costs of moving its property shall be borne by the source of the non-public funds in the same ratio as the non-public funds bear to the total project costs.
- b. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

13. Facilities in conflict. If, during the course of a project, City determines Grantee's facilities are in conflict, the following shall apply:

- a. Prior to City Notice to Proceed to Contractor: Grantee shall, within a reasonable time, but in no event exceeding three (3) months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by Grantee of written notice from City. However, if both City and Grantee agree, the time frame may be extended based on the requirements of the project.
- b. Subsequent to City Notice to Proceed to Contractor: City and Grantee will immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation is to begin no later than seventy-two (72) hours, if practicable, after written notification from City of the conflict.

14. Relocation delays.

- a. Subject to Grantee's compliance with Section 3.13 above, if Grantee's relocation effort so delays construction of a public project causing City to be liable for delay damages, Grantee shall reimburse City for those damages attributable to the delay created by Grantee. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter shall be referred to the City engineer for a decision. In the event that Grantee disagrees with the City engineer's decision, the matter shall be submitted to the City administrator or the City administrator's designee for determination, whose decision shall be final and binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the courts.
- b. In the event City becomes aware of a potential delay involving Grantee's facilities, City shall promptly notify Grantee of this potential delay.

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

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

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

18. Safety Requirements.

- a. Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
- b. Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and

all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

- c. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

#### **SECTION 4. DESIGN PROVISIONS**

1. System Upgrade: Minimum Channel Capacity.
  - a. Grantee shall, at a minimum, maintain throughout the term of this Franchise a System providing a minimum of seven hundred fifty (750) MHz capacity (of which at least two hundred (200) MHz may be used for digital capacity).
  - b. The System will utilize a hybrid fiber-coaxial architecture. In addition, the System will be designed with the capability to transmit return signals upstream in the 5-40 MHz spectrum.
  - c. Grantee shall develop, construct and operate a System capable of providing non-video services such as high-speed data transmission, Internet access, and Other Programming Services.
  - d. Grantee shall provide information to any business or other Subscriber within City which desires information regarding non-video services offered by Grantee.
  - e. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6 and Exhibit B.
2. Interruption of Service. Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than twenty-four (24) continuous hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption.
3. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are

expressly incorporated herein by reference. In addition, Grantee is subject to the technical standards outlined in Exhibit C attached hereto.

4. Special Testing.

- a. City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.
- b. Before ordering such tests, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee's expense by a qualified engineer selected by City and Grantee, and Grantee shall cooperate in such testing. If after such testing, it is found that Grantee is in compliance with the technical requirements of Section 4.3 above, then City shall pay the costs associated with the selected engineer.

5. Drop Testing and Replacement. The Drops and related passive equipment will be inspected during Installations to assure that the Drop and passive equipment can pass the full seven hundred fifty (750) MHz System capacity. Grantee shall replace all failing Drops and/or associated passive equipment at the time the Grantee upgrades Service to a level which requires a signal above the five hundred fifty (550) MHz spectrum at no separate charge to the individual Subscriber.
6. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall upon request of City also be filed with City or its designee within ten (10) days of the conduct of such tests.
7. Annexation. Upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise immediately upon notification to Grantee of the annexation by City, subject to the line extension policies contained herein and provided that the annexed area is not already served by another cable operator.

8. Line Extension.
- a. Grantee shall construct and operate its Cable System so as to provide Service to all parts of its Franchise area as provided in this Franchise and having a density equivalent of five (5) residential units per one-quarter (1/4) cable mile of System, as measured from the nearest tap on the Cable System.
  - b. Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.
  - c. Any residential and/or commercial unit located within two hundred (200) feet of the nearest tap on Grantee's system shall be connected to the System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the two hundred (200) foot limit, extend Service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs.
  - d. Under Normal Operating Conditions, if Grantee cannot perform Installations within the times specified in applicable customer standards, the Subscriber may request and is entitled to receive a credit equal to the charge for a Standard Installation. For any Installation that is not a free Installation or a Standard Installation, Grantee shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply will subject Grantee to appropriate enforcement actions. This section does not apply to the introduction of new products and services when Grantee is utilizing a phased introduction.
9. Nonvoice Return Capability. Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.
10. Lockout Device. Upon the request of a Subscriber, Grantee shall make available by sale or lease a Lockout Device.

## SECTION 5. SERVICE PROVISIONS

- 1. Regulation of Service Rates. City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or state law(s). City reserves the right to regulate rates for any future services to the extent permitted by law.
- 2. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can

meet FCC technical specifications and all payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.

3. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its Services within City. In its initial communication or contact with a non-Subscriber, Grantee shall inform the non-Subscriber of all levels of Service available, including the lowest priced and free Service tiers. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.
4. Consumer Protection and Service Standards. Grantee shall provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:
  - a. Cable System office hours and telephone availability:
    - (1) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
      - (i) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
      - (ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
    - (2) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
    - (3) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
    - (4) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
    - (5) Customer service center and bill payment locations will be open at least during Normal Business Hours.

b. **Installations, outages and service calls.** Under Normal Operating Conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

- (1) **Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.**
- (2) **Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.**
- (3) **The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)**
- (4) **Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.**
- (5) **If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.**

c. **Communications between Grantee and Subscribers:**

- (1) **Notifications to Subscribers:**
  - (i) **Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:**
    - a. **Products and Services offered;**
    - b. **Prices and options for programming services and conditions of subscription to programming and other services;**

- c. Installation and Service maintenance policies;
  - d. Instructions on how to use the Cable Service;
  - e. Channel positions of the programming carried on the System; and
  - f. Billing and complaint procedures, including the address and telephone number of the City.
- (2) Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 5.4(c)(1)(i). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the operator and the Subscriber.
- (3) Billing:
- (i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
  - (ii) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
- (4) Refunds: Refund checks will be issued promptly, but no later than either:
- (i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
  - (ii) The return of the equipment supplied by Grantee if Service is terminated.
- d. Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

Upon request, Grantee shall provide City with a quarterly compliance report specific to the System serving City, which report shall be in a form mutually agreeable to the City and Grantee that details the operational and customer service performance of Grantee.

Grantee shall comply with the cable industry's on-time guaranty as endorsed by the National Cable Television Association. This on-time guaranty generally provides that if Installation is not accomplished within the time frame specified by the operator, Installation shall be free for the Subscriber and operator shall provide said Subscriber with a Twenty Dollar (\$20) credit. Moreover, Grantee shall provide Subscribers with a Twenty Dollar (\$20) credit for any missed appointments.

5. Subscriber Contracts. Grantee shall file with City any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours.
6. Refund Policy. In the event a Subscriber establishes or terminates Service and receives less than a full month's Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing.
7. Late Fees. Fees for the late payment of bills shall at all times comply with all applicable state and federal laws.
8. Local Office Policy.
  - a. Grantee shall maintain a drop box within the Service Area for receiving Subscriber payments after hours. Payments at Grantee's drop box location shall be deemed received on the date such payments are picked up by Grantee which shall occur no less than twenty-four (24) hours after each and every due date for Subscriber bills.
  - b. Monthly Reports. Upon request, Grantee shall provide on a monthly basis a report drafted specifically for the City of Paynesville which shall provide 1) a detailed list of all outages; 2) a list of all trouble calls with fix code summaries; and 3) a list of all trouble calls listed by each street in the City.

## SECTION 6. ACCESS CHANNEL PROVISIONS

1. Grantee Support for PEG Access. Grantee shall provide the following support for PEG access usage within the Service Area:
  - a. Provision of the Channels designated in Exhibit B of this Franchise for local PEG programming and access use at no charge in accordance with the requirements of Exhibit B.

- b. Support of PEG programming to the extent specified in Exhibit B of this Franchise.
  - c. Provision of free public building Installation and Cable Service as more clearly specified in Exhibit B.
2. Compliance with Federal Law. Grantee and City agree that the PEG access support fee referenced in Exhibit B will not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such obligations shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 7 hereof or (ii) part of the Franchise Fees to be paid to City by Grantee pursuant to Section 7 hereof.

### SECTION 7. OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City administrator or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise; provided, however, that the City Council shall retain the sole authority to take enforcement action pursuant to this Franchise.
2. Delegated-Authority. The City may appoint a citizen advisory body or may delegate to any other body or Person authority to monitor the performance of Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of City.
3. Franchise Fee.
  - a. During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.
  - b. Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation.
  - c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.
4. Not Franchise Fees.
  - a. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise and that the Franchise Fees provided for in this section of this Franchise shall not be deemed

to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which Grantee shall be required to pay to City and/or to any other governmental authority, all of which shall be separate and distinct obligations of Grantee.

- b. Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to City pursuant to this Franchise shall be deducted from or credited or offset against any taxes, fees or assessments or general applicability levied or imposed by City or any other governmental authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.
  - c. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or any other governmental authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made pursuant by Grantee to City to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.
5. Access to Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records. City acknowledges that some of the records which may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Grantee which are not required to be made public pursuant to Applicable Law.
6. Reports and Maps to be Filed with City.
- a. Grantee shall file with the City, at the time or payment of the Franchise Fee, a report of all Gross Revenues in form and substance as Exhibit D attached hereto.
  - b. City and Grantee shall mutually agree, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise.
  - c. If required by City, Grantee shall furnish to and file with City administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.

7. Periodic Evaluation.

- a. City may require evaluation sessions no more than once every twelve (12) months during the term of this Franchise, upon thirty (30) days written notice to Grantee.
- b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, Subscriber rates, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant. Nothing in this Section 7.7 shall in any way impact the City's rights to enforce Grantee's compliance with the terms of this Franchise under Applicable Laws.
- c. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible as measured over the remaining life of the Franchise.

**SECTION 8. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

1. Performance Bond.

- a. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with City, the Grantee shall furnish a bond to City in the amount of Fifty Thousand Dollars (\$50,000.00) in a form and with such sureties as reasonably acceptable to City. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes, due City which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by City with respect to the bond are in addition to all other rights City may have under the Franchise or any other law. City may, from year to year, in its sole discretion, reduce the amount of the bond.
- b. The time for Grantee to correct any violation or liability, shall be extended by City if the necessary action to correct such violation or liability is, in the sole determination of City, of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability,

commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability.

- c. In the event this Franchise is revoked by reason of default of Grantee, City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by City as a result of said default or revocation.
- d. Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the Franchise or revocation for default thereof, provided City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.
- e. The rights reserved to City with respect to the performance bond are in addition to all other rights of City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right City may have.

2. Letter of Credit.

- a. At the time of acceptance of this Franchise, Grantee shall deliver to City an irrevocable and unconditional Letter of Credit, in form and substance acceptable to City, from a National or State bank approved by City, in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00).
- b. The Letter of Credit shall provide that funds will be paid to City, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this section, in payment for any monies owed by Grantee to City or any Person pursuant to its obligations under this Franchise, or in payment for any damage incurred by City or any Person as a result of any acts or omissions by Grantee pursuant to this Franchise.
- c. In addition to recovery of any monies owed by Grantee to City or any Person or damages to City or any Person as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Letter of Credit the following penalties:
  - (1) For failure to timely complete System upgrades as provided in this Franchise unless City approves the delay, the penalty shall be Five Hundred Dollars (\$500.00) per day for each day, or part thereof, such failure occurs or continues.
  - (2) For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the penalty shall be Two Hundred Fifty Dollars

(\$250.00) per day for each day, or part thereof, such failure occurs or continues.

- (3) Fifteen (15) days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be Five Hundred Dollars (\$500.00) per day for each day, or part thereof, such failure occurs or continues.
  - (4) For failure to provide the services Grantee has proposed, including, but not limited to, the implementation and the utilization of the access channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be Five Hundred Dollars (\$500.00) per day for each day, or part thereof, such failure occurs or continues.
  - (5) For Grantee's breach of any written contract or agreement with or to the City or its designee, the penalty shall be Five Hundred Dollars (\$500.00) per day for each day, or part thereof, such breach occurs or continues.
  - (6) For failure to comply with any of the provisions of this Franchise, or other City ordinance for which a penalty is not otherwise specifically provided pursuant to this paragraph (c), the penalty shall be Two Hundred Fifty Dollars (\$250.00) per day for each day, or part thereof, such failure occurs or continues.
- d. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.
- e. Whenever City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in subparagraph (c) above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the sole determination of City, is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one (1) or more terms, conditions or provisions of this Franchise, in the sole opinion of City, City may draw from the Letter of Credit all penalties and other monies due City from the date of the local receipt of notice.
- f. Whenever the Letter of Credit is drawn upon, Grantee may, within seven (7) days of such draw, notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee. All penalties shall continue to accrue from the Letter of Credit during any appeal pursuant to this subparagraph (f).
- (1) City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter.

- (2) Upon the determination of City that no violation has taken place, City shall refund to Grantee, without interest, all monies drawn from the Letter of Credit by reason of the alleged violation.
- g. If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in paragraph (a) of this section.
- h. If City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 8.2(a). as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any draws upon the Letter of Credit.
- i. If any Letter of Credit is not so replaced or replenished, City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as City determines in its sole discretion. The failure to replace or replenish any Letter of Credit may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the Letter of Credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.
- j. The collection by City of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the Letter of Credit, be deemed a waiver of any right of City pursuant to this Franchise or otherwise.

3. Liability Insurance.

- a. Upon the Effective Date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Minnesota with a rating by A.M. Best & Co. of not less than "A" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for

single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:

- (1) The policy shall provide coverage on an "occurrence" basis.
  - (2) The policy shall cover personal injury as well as bodily injury.
  - (3) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
  - (4) Broad form property damage liability shall be afforded.
  - (5) City shall be named as an additional insured on the policy.
  - (6) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage.
  - (7) Standard form of cross-liability shall be afforded.
  - (8) An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to City.
- b. City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.
- c. Grantee shall submit to City documentation of the required insurance, including a Certificate of Insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

4. Indemnification.

- a. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise and/or the activities of Grantee, it subcontractor, employees and agents hereunder. Grantee

shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings. Grantee shall not be required to provide indemnification to City for programming cablecast over the educational and governmental access Channels administered by City.

- b. The indemnification obligations of Grantee set forth in this Franchise not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.
- c. City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.
- d. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of he Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

5. Grantee's Insurance.

- a. Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.
  - (1) In order for City to assert is rights to be indemnified, defended, and held harmless, City must with respect to each claim:
    - (i) Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
    - (ii) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
    - (iii) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Section 8.5(a)(1)(ii) above.

**SECTION 9. SALE, ABANDONMENT, TRANSFER AND  
REVOCAION OF FRANCHISE**

1. City's Right to Revoke.

- a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that after notice and an opportunity to cure as reordered herein;
- (1) Grantee has violated material provisions(s) of this Franchise and has not cured; or
  - (2) Grantee has attempted to evade any of the provisions of the Franchise; or
  - (3) Grantee has practiced fraud or deceit upon City.
  - (4) City may revoke this Franchise without the hearing otherwise required herein if Grantee is adjudged a bankrupt.

2. Procedures for Revocation.

- a. City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required therein, City shall provide Grantee with the basis of the revocation.
- b. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- c. Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.
- d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any person or the public.

3. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.

4. Removal After Abandonment, Termination or Forfeiture.

- a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City.
- b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

5. Sale or Transfer of Franchise.

- a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted; provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.
- b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 9.5. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- c. The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following:
  - (1) All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof.
  - (2) A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the

FTC, the FEC, the SEC or MNDOT. Upon request, Grantee shall provide City with a complete copy of any such document; and

- (3) Any other documents or information related to the transaction as may be specifically requested by the City.
- d. City shall have such time as is permitted by federal law in which to review a transfer request.
- e. Subject to Applicable Laws, nothing herein shall in anyway prevent the City from seeking reimbursement from Grantee for all the legal, administrative, and consulting costs and fees associated with City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its Subscriber rates.
- f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments provided by the transferor.
- g. No Franchise may be transferred if City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.
- h. If at any time Grantee offers System or all of its ownership or control in said System for sale, City shall have the right to purchase System. If at any time Grantee received a bona fide purchase offer for System which Grantee is willing to accept, a complete copy of such offer shall promptly be given to City and City shall have the right to purchase System according to the terms of that offer. City shall exercise such right by submitting to Grantee, within sixty (60) days after City's actual receipt of the bona fide offer, notice that the City desires to purchase System pursuant to said offer. If City does not exercise such right System may be sold, but only on the terms submitted to City. If any changes are made in the purchase offer given to City, such purchase offer, as so changed, shall again be given to City and City shall have sixty (60) days from actual receipt by City of the Offer, as changed, within which to exercise its right to purchase System pursuant to the offer, as changed, all as above provided. If City does not exercise its right to purchase System pursuant to any offer given to City pursuant to this paragraph, and System is not sold to the buyer and on the terms set out in the offer given to

City, then the right of City to purchase System shall continue, and all subsequent purchase offers shall be given to City pursuant to this paragraph. Also, the City's right to purchase pursuant to this paragraph shall survive every sale to a buyer and shall continue to be binding upon every buyer of System.

- i. Upon forfeiture, revocation or termination of this Franchise, or at the normal expiration of the Franchise term, City shall have the right to purchase System. Such right shall be exercised upon written notice to Grantee within six (6) months after the occurrence of any such event.

## SECTION 10. PROTECTION OF INDIVIDUAL RIGHTS

1. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and City laws, and all executive and administrative orders relating to nondiscrimination.
2. Subscriber Privacy.
  - a. No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.
  - b. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.
  - c. Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing.

Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this section.

## SECTION 11. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive services of the System without Grantee's authorization.
2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.
3. Penalty. Any firm Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

## SECTION 12. MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
3. Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.
4. Compliance with Federal, State and Local Laws.
  - a. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any

service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.

- b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.
5. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
6. Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one (1) or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
7. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.
8. Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire,

explosion, vandalism, storm or other similar catastrophes; any law, order, regulation, direction, action or request of the United States Government or any other government including state and local governments (except for the City) having jurisdiction over either of the parties or of any department, agency, commission, court, bureau, governments, or of any civil or military authorities; national emergencies; insurrection; riots; wars; or strikes, lockouts or work stoppages or failure to obtain required permits, easements, authorizations or equipment when properly and timely requested.

**SECTION 13. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

1. Publication, Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.
2. Acceptance.
  - a. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.
  - b. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.
  - c. Grantee shall accept this Franchise in the following manner:
3. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
4. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates, and guaranties, as required herein that have not previously been delivered.

Passed and adopted this 28<sup>th</sup> day of August, 2002.

ATTEST:

By: Steve Helbert  
Its: City Administrator

CITY OF PAYNESVILLE, MINNESOTA

By: Jeff Thompson  
Its: Mayor

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

Date: September 26, 2002

MEDIACOM MINNESOTA LLC

By: [Signature]  
Its: Vice President, Regulatory Affairs

**EXHIBIT A  
OWNERSHIP**

[Grantee must maintain on file with City an accurate chart outlining its complete ownership structure. This chart will be provided by Mediacom Minnesota LLC.]

**EXHIBIT B  
GRANTEE COMMITMENT TO  
PEG ACCESS FACILITIES AND EQUIPMENT**

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

Initially one (1) Channel shall be provided by Grantee for shared public, educational and governmental ("PEG") access use in accordance with Minn. Stat. § 238.084. Grantee shall make available up to one (1) additional Channel for PEG use upon ninety (90) days advance written notice from the City. The PEG Channels shall be dedicated for PEG use for the term of the Franchise Agreement, provided that Grantee may upon written request to City, utilize the PEG Channels when they are not scheduled for PEG use. City and Grantee shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

City may not request additional Channel capacity beyond the two (2) Channels for PEG use except in accordance with applicable state laws. City shall be responsible for all programming requirements, including but not limited to scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair. Grantee shall make available the minimum equipment required for the public access Channel only pursuant to Minn. Stat. § 238.084 subd. 3 (b). Grantee may share such public access equipment with other communities served from Grantee's headend.

2. PEG OPERATIONS

City may, in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the expenses of supporting the PEG Channels. City and Grantee may negotiate an agreement for management of PEG facilities, if so desired by both parties.

3. TITLE TO PEG EQUIPMENT

City shall retain title to all PEG equipment and facilities purchased or otherwise acquired by City.

4. RELOCATION OF PEG CHANNELS

Grantee shall not relocate any PEG access Channel to a different Channel number unless specifically required by Applicable Laws or unless otherwise agreed to in writing by City. Grantee shall provide City and all Subscribers with at least sixty (60) days prior written notice of any legally required relocation.

5. PROMOTION OF PEG ACCESS

To the extent permitted by Grantee's billing process, Grantee shall allow the City to place bill stuffers in Grantee's Subscriber statements at a cost to the City not to exceed

Grantee's cost, no less frequently than once per year upon the written request of the City and at such times that the placement of such materials would not materially and adversely effect Grantee's cost for the production and mailing of such statements. The City agrees to pay Grantee in advance for the actual cost of such bill stuffers. Grantee shall also make available PEG access information provided by City in Subscriber packets at the time of Installation and at the counter in the System's business office serving the Service Area.

6. ACCESS OPERATING SUPPORT

Grantee shall provide City with a capital grant of Seven Thousand Five Hundred Dollars (\$7,500.00), upon acceptance of the Franchise and an additional Seven Thousand Five Hundred Dollars (\$7,500.00) upon the fifth anniversary of the date of acceptance of the Franchise. Any and all payments by Grantee to City in support of PEG access shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542).

Upon ninety (90) days advance written notice from the City, Grantee shall collect from Subscribers an additional PEG access contribution of up to fifty cents (\$.50) per Subscriber per month for the duration of the Franchise term solely to fund PEG access capital expenditures. The PEG access contribution may be increased no more than once each calendar year in the City's sole discretion, upon ninety (90) days advance written notice to Grantee, annually compounded from the effective date of this Franchise, based on the increase from the Consumer Price Index for all consumers and/or three percent (3%) each year, whichever is greater. Any and all payments by Grantee to City in support of PEG access capital expenditures shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 USC Section 542).

7. TWO-WAY SERVICE TO PUBLIC BUILDINGS

Grantee shall provide a two-way connection to the city hall, township hall, senior center and high school to facilitate the exchange of programming, including live cablecast programming from those buildings on the Grantee's Cable System and the Grantor's network. Grantee shall further provide, free of charge, all necessary interface equipment (modulator/demodulator) at the agreed-upon point of interconnection to allow the City to cablecast programming to Grantee's headend for cablecast on Grantee's Cable System.

**EXHIBIT B-1**  
**SERVICE TO PUBLIC AND PRIVATE BUILDINGS**

1. **PUBLIC BUILDINGS:**

Fire Station  
Police Station  
City Hall  
Township Hall  
Public Works  
Library  
Senior Center

Other: any other public building hereinafter built

2. **PUBLIC AND PRIVATE SCHOOLS:**

All state accredited K-12 public and private schools within the Franchise Area  
Other: any other public or private school building hereinafter built

**EXHIBIT C  
DESCRIPTION OF SYSTEM**

1. The Cable System shall be designed, constructed, routinely inspected, and maintained to guaranty the Cable System meets or exceeds the requirements of the most current additions of the National Electrical Code (NFPA 70) and the National Electrical Safety Code (ANSI C2).
2. General Requirements. Grantee shall use equipment used in high-quality, reliable, modern Cable Systems of similar design. Upon request of the City, Grantee shall provide to the City an as-built map used for the construction of the System.
3. General Description. The Cable System shall provide Subscribers with a technically advanced and reliable Cable System. The System shall operate with seven hundred fifty (750) MHz of bandwidth, capable of delivering a minimum of eighty (80) Channels of programming. The System will be two-way active, and it will have a return capacity of forty-two (42) MHz. The design will provide the benefits of proven eighty (80) Channel electronics while positioning the System for expansion of bandwidth and Channel capacity as technology and future services develop.

52

**EXHIBIT D  
FRANCHISE FEE PAYMENT WORKSHEET**

REVENUE SOURCE	NUMBER OF SUBSCRIBERS	GROSS REVENUE	5% FRANCHISE FEE	YTD
Basic Service				
Expanded Basic				
Premium - HBO				
Premium - Showtime				
Premium - TMC				
Premium - Disney				
Premium - Encore				
Pay-Per-Channel				
Pay-Per-View				
Installation				
Guides				
Shopping Channels				
Advertising Sales				
Equipment Rental				
Administrative Fees				
Other Income				
Other				
<b>TOTAL</b>				

SS

**REVENUE SOURCES INCLUDE:  
INSTALLATION:**

Standard Installation	Commonly occurring normal Installation
Additional Outlet	Installation on additional sets within a customer's home
FM Service	Separate Installation of FM Service
VCR	Installation of Converter to a VCR
Reconnection of Service	Reconnection of cable to a customer's address
A/B Switch	Separate Installation of an A/B Switch
Relocation	Moving an outlet within a customer's home
Non-Standard	Usually Installation of a commercial type of an account
Change of Service	Charge for upgrading or switching a premium service

**BASIC SERVICE:**

Basic Service	Revenue derived from basic service
Bulk Rates	Revenue derived from non-standard billings (i.e., apt. complex)
Reduced Promotional Basic	Revenue derived from a discounted basic service

**PAY-PER-VIEW:**

All Movies	Revenue derived from pay-per-view movies
Events	Revenue derived from special events (i.e., concerts, boxing matches, etc.)

**ADVERTISING:**

Sales	Revenue generated locally, regionally or nationally
Ad Production	Revenue generated from the production of a locally produced commercial
Production Income	Revenue generated from the production of training tapes, studio rentals, personnel fees, or rental income from renting vans or equipment
Tape Duplication	Revenue generated from duplication of L.O. or access tapes
Bill Stuffer	Revenue generated as a result of providing a bill stuffer to an advertiser

**OTHER:**

Returned Check Fees	Revenue generated from charges on returned checks
Pre-wired Cable Purchases	Revenue generated from the sale of cable to individuals who pre-wire their home
Antenna Rental	Any revenue derived from renting space on towers
A/B Switch	Revenue generated from sale of an A/B Switch
Late Fee	Revenue generated from receiving a late fee

56

**OTHER  
DOES NOT INCLUDE:**

Reimbursements

Revenues from the Department of Transportation or other government entities for mandatory relocations of Cable System. Revenue from employee reimbursements for cash advances.

Verified and submitted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MEDIACOM MINNESOTA LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT E  
CORPORATE GUARANTY**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, between \_\_\_\_\_ (“Guarantor”), the City of Paynesville, Minnesota (“Franchising Authority”), and Mediacom Minnesota LLC (“Company”).

**WITNESSETH**

WHEREAS, the Franchising Authority has entered into a Cable Television Franchise Ordinance dated \_\_\_\_\_, 2002 with the Company pursuant to Ordinance No. \_\_\_\_\_ (“Franchise Agreement”), pursuant to which the Franchising Authority has granted the Company a franchise, to own, operate, and maintain a cable television system (“System”); and

WHEREAS, Guarantor is the parent company of the Company and has a substantial interest in the System and the conduct of the Company in complying with the Franchise Agreement and any and all amendments thereof and any agreements related thereto, which Franchise Agreement and amendments are hereby specifically referred to, incorporated herein, and made a part hereof;

WHEREAS, Section 8.2 of the Franchise Agreement requires the Company, as principal, to furnish a Seven Thousand Five Hundred Dollars (\$7,500.00) security fund to ensure the faithful payment and performance of the Company’s obligations under the Franchise Agreement; and

WHEREAS, the Guarantor desires to provide its unconditional guaranty as part of such security fund.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby unconditionally guarantees the due and punctual payment and performance of all of the debts, liabilities and obligations of Company contained in the Franchise Agreement (“Indebtedness”).

This Agreement, unless terminated, substituted, or canceled, as provided herein, shall remain in full force and effect for the duration of the term of the Franchise Agreement, except as expressly provided otherwise in the Franchise Agreement.

Upon substitution of another Guarantor reasonably satisfactory to the Franchising Authority, this Agreement may be terminated, substituted, or canceled upon thirty (30) days prior written notice from Guarantor to the Franchising Authority and the Company.

Such termination shall not affect liability incurred or accrued under this Agreement prior to the effective date of such termination or cancellation.

58

The Guarantor will not exercise or enforce any right of contribution, reimbursement, recourse or subrogation available to the Guarantor against the Company or any other person liable for payment of the Indebtedness any collateral security therefor, unless and until all of the Indebtedness shall have been fully paid and discharged.

The Guarantor will pay or reimburse the Franchising Authority for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the Franchising Authority in connection with the protection, defense or enforcement of this guarantee in any arbitration, litigation or bankruptcy or insolvency proceedings.

Whether or not any existing relationship between the Guarantor and the Company has been changed or ended and whether or not this guarantee has been revoked, the Franchising Authority may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Guarantor and without any notice to the Guarantor. The liability of the Guarantor shall not be affected or impaired by any of the following acts or things (which the Franchising Authority is expressly authorized to do, omit or suffer from time to time, without notice to or approval by the Guarantor): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one (1) or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver or indulgence granted to the Company, any delay or lack of diligence in the enforcement of any Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, the Company or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Franchising Authority under § 1111(b)(2) of the United States Bankruptcy Code.

The Guarantor waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The Franchising Authority shall not be required first to resort for payment of the Indebtedness to the Company or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty. The Guarantor will not assert, plead or enforce against the Franchising Authority any defense of discharge in bankruptcy of the Company, statute of frauds, or unenforceability of the Guaranty which may be available to the Company or any other person liable in respect of any Indebtedness, or any setoff available against the Franchising Authority to the Company or any such other person, whether or not on account of a related transaction.

Any notices given pursuant to this Agreement shall be addressed to the Guarantor and Company at Mediacom Minnesota LLC, 100 Crystal Run Road, Middletown, NY 10941 and to the Franchising Authority at Mayor and Members of the City Council, City of Paynesville, 221 Washburne Avenue, Paynesville, Minnesota 56362.

IN WITNESS WHEREOF, the Company, Franchising Authority, and Guarantor have executed this Corporate Guaranty as of the day, month and year first above written.

**GUARANTOR:**

Mediacom Communications Corporation

By: Bruce Bluchman  
Its: Vice President, Legal/Regulatory Affairs

**COMPANY:  
MEDIACOM MINNESOTA LLC**

By: Bruce Bluchman  
Its: Vice President, Legal/Regulatory Affairs

**FRANCHISING AUTHORITY:  
CITY OF PAYNESVILLE, MINNESOTA**

By: Jeff Thompson  
Its: MAYOR