

construct and activate cable plant to service annexed or newly developed areas but in no event to exceed twelve (12) months from notice thereof by City to Grantee and qualification pursuant to the density requirements of Section 4, Paragraph 8 hereof.

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 during Normal Business Hours 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
City of Lilydale
1011 Sibley Memorial Highway
Lilydale, MN 55118

If to Commission:

Executive Director
Northern Dakota County Cable Communications Commission
5845 Blaine Avenue
Inver Grove Heights, MN 55076

If to Grantee:

General Manager
MediaOne of St. Paul, Inc.
10 River Park Plaza
St. Paul, MN 55107

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

10. Ownership of Grantee. Grantee represents and warrants to City and Commission that the relevant corporate ownership of the Grantee as of the Effective Date of this Franchise is 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 shall notify City prior to such repairs, if practicable, and shall obtain the necessary permits in a reasonable time after notification to City.
- b. Generally applicable fees and reimbursement paid through the permitting process is separate, and in addition to, any other fees included in the Franchise. Failure to obtain permits or comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other Applicable Law. 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.

2. Use of existing poles or conduits.

a. Grantee shall utilize existing poles, conduits and other facilities whenever commercially and technologically feasible, and shall not construct or install any new, different or additional poles whether on public property or on privately-owned 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 any Grantee 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 placed underground where all utility lines are placed underground.

3. 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 maintained by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.

4. Disturbance or damage. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to substantially the same condition 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, public, or private property back into substantially the same condition as that prevailing prior to Grantee's work. In the event City determines that Grantee is responsible for such disturbance or damage and fails to restore as set forth in this section, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City's invoice therefore.

5. 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, City freeway or Rights-of-Way construction, City 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 temporary 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 actual expense of such temporary removal or raising or lowering of wires shall be

paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than ten (10) days advance written notice from such person holding a permit to arrange such temporary wire alterations.

6-Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the city administrator, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages. Notwithstanding the above, Grantee reserves the right to assert a right of reimbursement or compensation from any responsible party.

7- 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 any required 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 shall be subject to such generally applicable regulation as the city administrator or other authorized official may establish to protect the public health, safety and convenience.

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

9. Installation Records. Grantee shall keep accurate installation records, maps or diagrams, 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, if possible, such information in an electronic mapping format compatible with the then-current City electronic mapping format. At the commencement of this Franchise and upon completion of any further construction or relocation of underground facilities in the Rights-of-Way and public ways, Grantee shall provide City, if possible, with installation records in an electronic format compatible with the then-current City electronic mapping format showing the location of the underground and above ground facilities.

10. 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 or State 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, aerial, surface, or subsurface improvement, including but not limited

to water mains, traffic control conduits, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.

11. City's Rights. 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.

12. Facilities in Conflict. If, during the course of a project, City determines Grantee's facilities are in conflict, then Grantee shall, within a reasonable time, but in no event exceeding four (4) 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.

13. Interference with City Facilities. The installation, use and maintenance of Grantee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to unreasonably 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.

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

15. Collocation. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to collocate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities, in the case that relocation or extension of Grantee's facilities is approved or required by City.

16. Safety Requirements.

a. Grantee shall at all times employ ordinary and reasonable care and shall install, maintain, and 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, 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. Minimum Channel Capacity,

a. Upon the Effective Date of this Franchise, Grantee's System has a 750 MHz capacity and utilizes a hybrid fiber-coaxial architecture. Grantee's System shall continue to provide and utilize a minimum of 550 MHz for Cable Services and shall continue to provide for the term of this Franchise a minimum of 750 MHz capacity.

b. Maintenance of the System shall occur as described in Exhibit C attached hereto.

c. Grantee shall maintain a System capable of providing non-video Cable Services such as high-speed data transmission, Internet access and other competitive services. It is anticipated that Grantee may use 200 MHz of the total 750 MHz System capacity for the provision of such services.

d. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided Grantee notifies City and Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments in the manner and to the extent required by federal law and subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536 and 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. To the extent within Grantee's control in the ordinary course of business, 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 rebuttably presumed to be between the hours of 12:00 a.m. and 6:00 a. m. local time. If service is interrupted for a total period of more than twenty-four (24) continuous hours to one or more Subscribers in any thirty (30) day period, those Subscribers shall, upon request, 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, to the maximum extent that the FCC has not specifically preempted the City's rights to set its own technical standards for the operation of Grantee's Cable System, Grantee is subject to the technical standards outlined in Exhibit C, paragraph 5, attached hereto.

4. Special Testing.

a. Throughout the term of this Franchise, 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 shall cooperate in such testing.

5. Drop Testing and Replacement. Grantee shall insert a 750 MHz carrier or equivalent at a level 10db below the video carriers that shall be measured and recorded by Grantee as a normal procedure during all service and installation calls. In addition, the Drops and related passive equipment may be inspected to assure that the Drop and passive equipment can pass the full 750 MHz System capacity. In the event measurement of the carrier or the inspection demonstrates that a Drop or associated passive equipment does not pass the full 750 MHz, the Subscriber address will be recorded by Grantee, and Grantee shall provide City and Commission, or their designees, upon request, a report indicating the addresses where Drops or associated passive equipment have failed. Grantee shall replace all failing Drops and/or associated passive equipment at the time the address upgrades service to a level which requires a signal above the 550 MHz spectrum at no separate charge to the individual subscriber.

6. FCC Reports. The results of any tests required to be filed by Grantee with the FCC or placed in Grantee's public inspection file as required by FCC rules, shall also be made available to City or its designee upon request within ten (10) days of the conduct of the date of request.

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.

8. Line Extension.

a. Grantee shall construct and operate its Cable System to as to provide service to all parts of its Franchise area as provided in this Franchise and having a density equivalent to seven (7) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant if the extension is to be constructed using aerial plant, and ten (10) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant if the extension is to be constructed using underground plant. The City, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Grantee with at least fifteen (15) days advance notice of an available open trench for the placement of

necessary cable.

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 and Grantee shall not be obligated to extend its System until seventy-five percent (75%) of the Persons requesting service in such area have prepaid their pro rata share of the extension.

c. Any residential unit located within one-hundred twenty-five (125) feet of the nearest active plant on Grantee's System shall be connected to the System at no charge other than the standard installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred twenty-five (125) foot limit, extend service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs.

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 twelve (12) 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 a Lockout Device in accordance with Applicable Law.

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 Applicable Laws. City and Commission reserve the right to regulate rates for any future services to the extent permitted by Applicable Laws. Any rate regulation undertaken by City shall at all times comply with the rate regulations of the FCC at 47 C.F.R. §76.900 et. seq., as may from time to time be amended.

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. 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 prospective Subscriber and in all general solicitation materials marketing the

Grantee or its services as a whole, Grantee shall inform the prospective Subscriber of all levels of service available, including the lowest priced service tiers. Grantee shall have the right to market door-to-door during reasonable hours consistent with Applicable Laws.

4. Consumer Protection and Service Standards. Grantee shall maintain a convenient local customer service and bill payment location in Dakota County for receiving subscriber payments, handling billing questions and equipment replacement. Grantee shall comply with the following consumer protection standards:

a. Cable System office hours and telephone availability:

i. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

1. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

2. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

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

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

iv. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.