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ORDINANCE NO. 00-1

AN ORDINANCE GRANTING A FRANCHISE TO MEDIAONE OF ST. PAUL, INC., ("GRANTEE") TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF LILYDALE, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

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

STATEMENT OF INTENT AND PURPOSE

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

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

FINDINGS

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

1. Grantee's technical ability, financial condition, legal qualifications, and character were

considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

2. Grantee's plans for 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;

4. City has exercised its authority under Minnesota law to enter into a Joint and Cooperative

Agreement, and an Amended Joint and Cooperative Agreement, with other cities authorized to grant a cable communications franchise, and has delegated authority to the Northern Dakota County Cable Communications Commission to make recommendations to City regarding this Franchise and to be responsible for the ongoing administration and enforcement of this Franchise as herein provided; and 5. The Franchise granted to Grantee is nonexclusive.

SECTION 1. SHORT TITLE AND DEFINITIONS

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

2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. 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 of competent jurisdiction.
- 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. 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 system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment, or facilities located in City and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and data. System as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(7).
- e. "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.
- f. "City." means City of Lilydale, 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 Lilydale, 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. "Commission" means the Northern Dakota County Cable Communications Commission or its successors or delegations, including representatives of the Member Cities as may exist pursuant to a then valid and existing Joint and Cooperative Agreement and Amended Joint and Cooperative Agreement between Member Cities.

j. "Commission Office" or "Commission Facility" means the facility located at 5845 Blaine Avenue, Inver Grove Heights, Minnesota 55076-1401 or alternative location established in the Commission's sole discretion.

k. "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 Subscriber's service.

l. "Drop" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

m. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

n. "Franchise" or "Cable Franchise" means this ordinance and the regulatory and contractual relationship established hereby.

o. "Grantee" means MediaOne of St. Paul, Inc., its agents, employees, lawful successors, transferees or assignees.

p. "Gross Revenue" means any and all revenue received directly or indirectly by Grantee, that is derived from the operation of the Cable System to provide Cable Services. Gross Revenues shall include, by way of example and not limitation, revenues from Basic Cable Service, all Cable Service fees, Pay Television Franchise Fees, late fees, guides, home shopping, Installation and reconnection fees, upgrade and downgrade fees, Converter rental fees and Lockout Device fees. Gross Revenues shall also include, to the extent permitted by Applicable Laws, Internet access fees and cable modem service fees resulting from the provision of those services. The term Gross Revenues 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, advertising revenue, studio rental and production equipment rental.

q. "Guaranty" means a contract wherein the parent company, general partnership or other persons, firms or organizations whose financial standing is used to support the commitments of Grantee will undertake to promise that the obligations, duties and liabilities may be assumed by and become the responsibility of Guarantor.

r. "Installation" means the connection, by or on the behalf of the Grantee, of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.

s. "Institutional Network" or "I-Net" means a communications network which is described in Section 7 herein and which is generally available only to Subscribers who are not residential Subscribers.

t. "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 Communication System.

u. "Local Origination" means programming produced by either the Grantee or

Commission and/or City staff regarding issues and events affecting the member municipalities of the Commission. Local origination programming may include public, governmental and educational access programming.

v. "Member Cities" or "Member Municipalities" means those cities that are parties to a then valid and existing joint powers agreement which, at the time of granting this Franchise, include Inver Grove Heights, Lilydale, Mendota, Mendota Heights, Sunfish Lake, South St. Paul, and West St. Paul.

w. "Normal Business Hours" means those hours during which most similar businesses in City are open to serve customers. In all cases, "Normal Business Hours" shall include some evening hours at least one night per week and/or some weekend hours.

x. "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.

y. "Other Video Programming" means information that a cable operator makes available to all subscribers generally.

z. "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 as defined at 47 U.S. C. §§ 623.

aa. "PEG" means public, educational and governmental.

bb. "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.

cc. "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.

dd. "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.

ee. "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.

ff. "Standard Installation" means any installation which is located up to 125 feet from the existing distribution system.

gg. "Subscriber" means a member of the general public who receives broadcast programming distributed by a Cable System and does not further distribute it.

hh. "Television Receiver" means any device exclusive of a "Converter" which is used by a Subscriber to tune television signals including, but not limited to, standard television sets, video tape recorders, computer video tuner cards, or similar devices.

ii. "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 the 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 ground 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 or reasonably anticipated future 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. Before granting an additional cable television franchise, the City shall give written notice to the Grantee of any other proposal to service all or part of the Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional cable television franchise should be granted.

In the event Grantee believes that the City has entered into an additional cable television franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, the City shall, upon request by Grantee, enter into good faith negotiations with the Grantee to consider modification of the Grantee's Franchise.

3. Lease or Assignment Prohibited. No Person may lease any portion of Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization from City. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 10, Paragraph 5.

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

5. Previous Franchises. Upon acceptance by Grantee as required by Section 14 herein, this Franchise shall supersede and replace any previous ordinance, as well as written agreements between the parties which pre-date this Franchise.

6. Compliance with Applicable Laws. Resolutions and Ordinances.

a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in

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, and eminent domain rights of City. This Franchise may be modified or amended with the written consent of Grantee and City as provided in Section 13, Paragraph 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, including any Right-of-Way Ordinance, which may have the effect of superseding, modifying or amending the terms of Section 3 and/or Section 8 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 conflict with federal law or exceed burdens on similarly situated Rights-of-Way users.

c. In the event of any conflict between Section 3 and/or Section 8 of this Franchise and any lawful and generally applicable City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 3 and/or Section 8 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 conflicts with federal law or exceeds burdens on similarly situated Rights-of-Way users.

d. In the event any City lawfully and generally applicable ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 3 and/or Section 8 of 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 conflicts with federal law or exceeds 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, Paragraph 9. City shall provide a written response within seventeen (17) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.

7. Rules of Grantee. 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 it exists from time to time. Consistent with Section 4, Paragraph 7 hereof, 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, Paragraph 8 hereof. Grantee shall be given a reasonable period of time to