

TO: Honorable Mayor and City Council

FROM: City Administrator Ron Johnson

SUBJECT: Conduct 2nd Reading of Ordinance Approving HBC's Cable Franchise Application and Agreement; Adopt Ordinance; Approve Summary Publication of Ordinance

DATE: February 16, 2017

BACKGROUND

At the August 3, 2016 Council meeting, approval was given to Provide Notice of Council's Intent to Consider Issuance of a Cable Franchise.

Applications were received from Hiawatha Broadband Communications, Inc. (HBC) and Frontier Communications of MN, Inc. A public hearing was conducted in September and Council approved a motion to direct staff (including consulting attorney Bob Vose, Kennedy & Graven) to review applications, report on applicants' qualifications, and negotiate franchise terms.

HBC provided a complete application and the required application fee per the City's application instructions. The application, subsequent hearing, and negotiated franchise terms adequately address HBC's qualifications to receive a cable franchise. Bob Vose, Kennedy & Graven, saw no legal impediment to approval of HBC's application.

Based on review of HBC's application and franchise negotiations with the company, Mr. Vose and staff recommend approval of the application and adoption of the cable television franchise that has been negotiated with HBC.

At the February 7 Council meeting, a resolution approving HBC's application was adopted and a first reading of an ordinance granting a cable tv franchise to HBC was conducted.

REQUESTED COUNCIL ACTION

- 1) Approve a motion to conduct second reading of AN ORDINANCE GRANTING A FRANCHISE TO HIAWATHA BROADBAND COMMUNICATIONS, INC. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF CANNON FALLS, MINNESOTA
- 2) Approve a motion adopting said ordinance granting a cable franchise to HBC, and
- 3) Approve the summary publication for said ordinance.

Attachment(s): Ordinance in Entirety; Summary Publication

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

**ORDINANCE NUMBER 349
SECOND SERIES**

**AN ORDINANCE GRANTING A FRANCHISE TO HIAWATHA BROADBAND
COMMUNICATIONS, INC. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE
COMMUNICATIONS SYSTEM IN THE CITY OF CANNON FALLS, 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 Cannon Falls, Minnesota ordains:

STATEMENT OF INTENT AND PURPOSE

The City intends, by the adoption of this Franchise, to bring about the further development and continued operation of a Cable System. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public generally. Further, the 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 Council, in the best interests of the City and its residents.

FINDINGS

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

1. The Grantee's technical ability, financial condition, and legal qualifications were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing, upgrading, and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by the 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 Franchise Ordinance.

2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
 - a. "Basic Cable Service" means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, 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).
 - b. "City" means the City of Cannon Falls, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
 - c. "City Council" means the governing body of the City of Cannon Falls, Minnesota.
 - d. "Cable Service" or "Service" means the provision of communications and/or entertainment services as "Cable Service" is defined by Minn. Stat. § 238.01 et seq. and 47 U.S.C. § 521 et seq., as may be amended from time to time.
 - e. "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 definitions set forth in Minn. Stat. 238.02, subd. 3 and 47 U.S.C. § 522(7).
 - f. "Converter" means an electronic device which converts signals to a frequency or format acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all signals included in the Service purchased.
 - g. "Drop" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
 - h. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
 - i. "Franchise" or "Cable Franchise" means this ordinance and the regulatory and

contractual relationship established hereby.

- j. "Franchise Fee" means the tax, fee or assessment imposed by the City on a Grantee solely because of its status as a recipient of a Cable Franchise. The term "Franchise Fee" does not include: (i) any tax, fee or assessment of general applicability; (ii) any payments which are required by this Franchise for, or in support of the use of public, educational, or governmental access facilities; (iii) any capital costs required by this Franchise incurred by Grantee for public, educational, or governmental access facilities; (iv) requirements or charges incidental to awarding or enforcing this Franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages; (v) any fee imposed under Title 17 of the United States Code. Franchise Fees may be used and expended by the City for any lawful purpose.
- k. "Grantee" is Hiawatha Broadband Communications, Inc., a Minnesota corporation, its lawful successors, transferees or assignees.
- l. "Gross Revenue" means all revenue received directly or indirectly by the 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 to provide Cable Service including, but not limited to, all Cable Service fees including premium, pay-per-view, Pay Television, and similar fees, Franchise Fees, late fees, program guide fees, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue, revenues generated by sales on home shopping channel(s), leased channel fees, Converter rental fees, and Lockout Device fees. 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. Gross Revenues shall not include any PEG Fees billed to or collected from Subscribers, but shall include Franchise Fees.
- m. "Installation" means the connection of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.
- n. "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.
- o. "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.
- p. "Person" is any Person, firm, partnership, association, corporation, company, or other legal entity.

- q. "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.
- r. "Standard Installation" means any residential Installation which can be completed using a Drop of two hundred fifty (250) feet or less.
- s. "Subscriber" means any Person who lawfully receives Service via the System. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

**SECTION 2.
GRANT OF AUTHORITY AND GENERAL PROVISIONS**

- 1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Grantee shall comply with all provisions of its Proposal, which is expressly incorporated herein by reference. Failure of Grantee to provide a System as described in its Proposal, or meet obligations and comply with all provisions therein, 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 construction and operation of a Cable System to provide Cable Service. The terms and conditions of any such grant of use of the Rights-of-Way shall comply with Minnesota Statutes, Section 238.08, subd. 1 provided, however, that the City will not grant an additional franchise on materially different terms and conditions. In the event the Grantee believes the City has granted a franchise with materially

different terms, the Grantee may request Franchise amendments to relieve the Grantee of any more burdensome requirements, and the City will not unreasonably deny or refuse such request.

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.
4. Franchise Term. This Franchise shall be in effect for ten (10) years from the date of adoption by the City, unless sooner renewed, revoked or terminated as herein provided.
5. Previous Franchises. This Franchise supersedes and replaces any previous franchise issued 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, the 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. Except as provided below, any modification or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of City's police power, in which case the provisions modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of 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. 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.
 - c. 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 the City, in accordance with Section 2.9. The 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.

Converters necessary to receive redistributed Service at additional outlets shall be agreed upon by City and Grantee and shall not exceed Grantee's lowest published rate.

SECTION 3. CONSTRUCTION STANDARDS

1. Registration, Permits and Construction Codes.
 - a. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, Installation, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.
 - b. 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.
2. Service Area Obligation. This Franchise is granted for the Service Area. Grantee shall design, construct, and activate the Cable System so as to make Service available to all requesting businesses and residences in the Service Area within two (2) years of the Effective Date, and thereafter maintain the System. As the Cable System is constructed and made capable of providing Cable Service, Grantee shall activate and offer Cable Service to businesses and residences passed by the System within a reasonable period of time. No Person shall be refused Service arbitrarily, nor denied to any group of potential Subscribers because of the income of the residents in such area. Grantee shall meet with City representatives upon request to report on the progress of Cable System construction and Service activation and provide current Service Area maps. Grantee's maps may be marked as "Trade Secret" in which case the City shall maintain them accordingly under the Minnesota Data Practices Act, Minn. Stat. Ch. 13.
3. Repair of Rights-of-Way and Property. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to the same condition as that prevailing prior to Grantee's work, 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 good condition. 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.
4. Conditions on Right-of-Way Use.
 - a. 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.

- b. All System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located so as not to obstruct or interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of-Way and not to interfere with existing public utility installations.
 - c. If at any time during the period of this Franchise City shall elect to alter or change the grade or location of any Right-of-Way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the reasonable and lawful standards and specifications of City.
 - d. The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all reasonable and lawful requirements of City.
 - e. The Grantee shall, upon request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person, in advance, requesting the same, and the Grantee shall be given not less than ten (10) days advance written notice to arrange for such temporary changes.
 - f. The Grantee shall have the authority to trim any trees upon and overhanging the Rights-of-Way of City so as to prevent the branches of such trees from coming in contact with the wires and cables or other facilities of the Grantee.
 - g. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
4. Undergrounding of Cable. Unless otherwise required by action of City Council, Grantee must place newly constructed facilities underground in areas of City where all other utility lines are placed underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe, all pursuant to plans submitted with Grantee's permit application(s) and approved by City.
 5. Installation of Facilities. No poles, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without required permit of City.

6. Safety Requirements.

- a. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
- b. The Grantee shall install and maintain its System and other equipment in accordance with 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. All 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. System Channel Capacity.

- a. Grantee shall operate for the term of this Franchise a System providing the equivalent of 860 MHz capacity and delivering in excess of 100 video programmed channels including digital video programming services.
- b. Grantee will operate throughout the term of this Franchise a System utilizing the architecture as described in the attached Exhibit B. Said System is capable of providing non-video services such as high-speed data transmission, Internet access and other competitive services.
- 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 competitive services.
- d. All final programming decisions remain the discretion of Grantee in accordance with the Proposal, 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 6.1(c).

2. Interruption of Service. The Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than forty eight (48) hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption.

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 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.
4. Special Testing.
 - a. The City shall have the right to inspect all construction or Installation work performed pursuant to the provisions of the Franchise. In addition, the 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. The 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. The 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. In the event that such testing indicates conformance with FCC technical specifications, Grantee shall not be liable for the expenses incurred.
5. Drop Testing and Replacement. Drops and related passive equipment will be inspected during Installations by Grantee to assure that the Drop and passive equipment can pass the full 860 MHz System capacity. In the event measurement of the carrier are technically capable of providing Service to the Subscriber. Grantee shall replace all failing Drops and/or associated passive equipment installed by Grantee at the time the Subscriber upgrades Service to a level which requires improved capability 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 the City or its designee within ten (10) days of the completion of such tests.
7. Nonvoice Return Capability. Grantee is required to use cable and associated electronics having the technical capability for nonvoice return communications.
8. 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.
 - a. The 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.
 - b. Grantee shall give City and Subscribers written notice of any change in a rate or charge at least one (1) billing cycle prior to the effective date of the change. Bills must be clear, concise, and understandable, with itemization of all charges.
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. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.
4. Subscriber Inquiry and Complaint Procedures.
 - a. Grantee shall have a local or toll-free telephone number, listed in the white pages of the local telephone directory, which shall be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week, three hundred sixty-five (365) days-a-year basis. Grantee may, in its discretion, route this local number to a cable center located in a municipality other than City. During normal business hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries.
 - b. Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule Service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the FCC and City where applicable and lawful. 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 (90) percent of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time. Grantee shall respond to written complaints with copy to City or its designee within thirty (30) days.

- c. Subject to Grantee's obligations pursuant to law regarding privacy of certain information, Grantee shall prepare and maintain written records of all complaints received from City and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide City with a written summary of such complaints and their resolution upon request of City. As to Subscriber complaints, Grantee shall comply with FCC record-keeping regulations, and make the results of such record-keeping available to City upon request.
 - d. Subscriber requests for repairs shall be performed within thirty-six (36) hours of the request unless conditions beyond the control of Grantee prevent such performance. Grantee may schedule appointments for Installations and other Service calls either at a specific time or, at a maximum, during a four (4) hour time block during normal business hours. Grantee may also schedule Service calls outside normal business hours for the convenience of customers. Grantee shall use its best efforts to not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the installer or technician is late and will not meet the specified appointment time, he/she must use his/her best efforts to contact the customer and reschedule the appointment at the sole convenience of the customer. Service call appointments must be met in a manner consistent with FCC standards.
5. Subscriber Contracts. Grantee shall file with City any standard form Subscriber contract utilized by Grantee provided that all multi-channel video providers franchised by the City and operating in the City are required to similarly file. 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. In addition, in the event that an outage of Service occurs for a total period of more than twenty-four (24) hours in any thirty (30) day period, regardless of the cause of the outage, a Subscriber shall, upon request, be credited pro rata for such outage.
7. Late Fees. Fees for the late payment of bills shall not be assessed until after the Service has been fully provided and, as of the due date of the bill notifying Subscriber of an unpaid balance, the bill remains unpaid. Late Fees may not exceed the actual costs to Grantee of late payment of bills and the servicing and collecting of such accounts.
8. Converter Box. To the extent consistent with applicable law, a Converter shall not be required to receive Basic Cable Service as defined by the Cable Act but may be required to receive other tiers of Service.

9. Additional Customer Service Requirements. The City expressly reserves authority to adopt additional or modified customer service requirements to address Subscriber concerns or complaints in accordance with law.
10. Violations. Any violation of this Section 5 shall be a violation of this Franchise and shall subject Grantee to all remedies, penalties, and sanctions provided for herein including Franchise termination. City's determination of a violation of these requirements may be made on the basis of individual complaints received and need not be made on the basis of scientific study or surveys. Grantee may demonstrate compliance or seek to refute a determination of violation through the use of specialized reporting equipment and/or by performing statistically significant and accurate surveys. In the event Grantee acquires such equipment or performs such a survey, the results shall be provided to City as part of the quarterly reports to City required herein.

SECTION 6. ACCESS CHANNEL(S) PROVISIONS

1. Public, Educational and Government Access.
 - a. City is hereby designated to operate, administer, promote, and manage access-public, education, and government programming (hereinafter "PEG access") programming on the Cable System. Nothing herein shall prevent City from including sponsorships before or after local PEG access programming similar to those sponsorships used on public broadcasting stations.
 - b. Grantee shall dedicate 2 channels for PEG access and community programming use. All residential Subscribers who receive all or any part of the total Services offered on the System shall be eligible to receive such channels at no additional charge. The channels shall be activated upon the effective date of this Franchise and thereafter maintained. City may rename, reprogram, or otherwise change the use of these channels in its sole discretion, provided such use is non-commercial, lawful, and retains the general purpose of the provision of community programming. Nothing herein shall diminish the City's rights to secure additional channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference.
 - c. One of the PEG access channels required by this section shall be designated/numbered Channel 12. Grantee shall have the right to relocate PEG access channels to a different channel number as required by law. For any other relocation, Grantee shall request the City's consent at least sixty (60) days prior to the proposed relocation date. In the event any PEG access channel is relocated, Grantee shall reimburse City up to \$5,000.00, adjusted annually by the Consumer Price Index (CPI), for all costs incurred in conjunction with such move including change of letterhead, promotion of new channel location(s) and promotions to inform Subscribers of the new location through bill inserts, newspaper advertisements, or video advertisements.
 - d. Grantee shall provide the PEG access channels on the Basic Cable Service tier. Grantee shall provide the PEG channels in standard definition (SD) digital format,

and in high definition (HD) provided that the signal received from the City is in HD, and provided that the Grantee shall not be required to provide the PEG channels at a resolution higher than the highest resolution used in connection with the Grantee's delivery of other channels. The City acknowledges that receipt of an HD format channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services provided by Grantee. The Grantee shall be responsible for all System equipment and costs associated with providing the HD channels on its side of the demarcation point.

- e. If Grantee deploys a visual interface under its control for its channels, the PEG access channels shall be treated in a non-discriminatory fashion so Subscribers have ready access to such channels.
 - f. In addition to ensuring that the PEG access channels meet all applicable FCC signal quality standards requirements, Grantee shall maintain the System to ensure that such channels are not subject to material degradation, distortion, or visual interference when compared to commercial channels delivered on the System.
2. Charges for Use. Channel time and playback of prerecorded programming on the PEG access and community program channel(s) must be provided without charge to City and the public.
 3. Access Rules. City, or its designee, shall implement rules for use of any access channel(s).
 4. Access Support. No later than July 1, 2017, Grantee shall pay Thirty Thousand and No/100 Dollars (\$30,000) as a grant to the City for capital support of PEG equipment and facilities. The Grantee shall provide additional capital support in the following manner:
 - a. Access Support Fee. Upon the effective date of this Franchise, Grantee shall provide to City a per Subscriber fee of One and 25/100 Dollars (\$1.25) per month to be used by City solely to fund public, educational and governmental access capital related expenditures (hereinafter "Access Support Fee"). The Access Support Fee may be adjusted by the City, upon ninety (90) days advanced written notice to Grantee, no more frequently than every two (2) years during the term of this Franchise, equal to the cumulative increase in the Consumer Price Index ("CPI") during the preceding years. City, in its sole discretion shall have the right, upon ninety (90) days advanced written notice to Grantee, to reduce the Access Support Fee.
 - b. Access Support Fee is Not a Franchise Fee. Any and all payments by Grantee to City in support of PEG access programming shall not be deemed "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542). Any payments due under this provision shall be payable quarterly.

- c. Level Terms. Any franchise issued to another provider of Service shall contain matching PEG access support requirements and if any franchisee is subject to lower PEG access support obligations than required herein, the Grantee may reduce its PEG Support to match such lower obligation.
5. Title to PEG Equipment. The City shall retain title to all PEG equipment and facilities purchased or otherwise acquired previously granted by the City.
6. State and Federal Law Compliance. Satisfaction of the requirements of this Section 6 satisfies any and all of Grantee's state and federal law requirements of Grantee with respect to PEG access.
7. Technical Assistance. Grantee shall at all times cooperate with City in providing technical assistance desired by City regarding PEG access programming. For example, Grantee will provide input and assistance to City should the City seek to improve the picture and sound quality of City covered cablecasts, including the type of microphones to purchase and the proper installation and use of the sound system.
8. Two-way Connections. Grantee shall provide return capacity from the Cannon Falls High School, City Hall and John Burch Park to facilitate the live cablecast of PEG access programming from each of these sites on either or both of the dedicated PEG access channels. Grantee shall provide such System equipment as is necessary for such purpose including such end-user equipment (other than cameras, microphones or playback equipment) as is necessary. The Grantee and any other franchised providers of Service may cooperate and coordinate the delivery of such return capacity so that duplicative obligations are not imposed.
9. Grantee's Right to Distribute PEG Programming. Grantee shall have the right to redistribute throughout other communities served by Grantee, all public, educational and governmental access programming cablecast by City on the PEG access channels required pursuant to this Section 6.

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. The City, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.
2. Delegated-Authority. The City may appoint a citizen advisory body or may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of the 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 or its delegates 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 thirty (30) days of the end of each of Grantee's fiscal quarters together with a report, as shown on Exhibit C, showing the basis for the computation. Grantee may omit Subscriber data from Exhibit C reports, but shall, upon request, provide City with Subscriber data. Grantee may label such data "trade secret" and City shall follow applicable state law governing the protection of trade secret data.
- 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.
- d. In the event Grantee bundles or combines Cable Services subject to the Franchise Fee with non-Cable Services which are not subject to the Franchise Fee so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee shall, for the purpose of calculating the Franchise Fee, allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.
- e. Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than forty-five (45) days after the end of a given quarter shall be delinquent and shall immediately thereafter accrue simple interest at twelve percent (12%) per annum. Grantee shall in all cases be subject to interest on any payment more than thirty (30) days after the end of a given quarter.
- f. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to the City pursuant to this section shall take precedence over all other material provisions of the Franchise and 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 do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made by Grantee pursuant to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

4. Access to Records; Audit. 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. If such audit indicates a Franchise Fee or PEG Fee underpayment of five percent (5%) or more of the amount due, the Grantee shall assume all of City's out-of-pocket costs associated with the conduct of such an audit. Grantee shall either (i) remit to City all applicable Franchise Fees and PEG fees due and payable together with all accrued interest as set forth above within 30 days of receiving the audit statement; or (ii) provide written notice to City that it disputes the audit finding within the same 30 days of receiving the audit statement in which case the procedures of Section 8.2 shall apply.

5. 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 required by City.
- b. Grantee shall prepare and furnish to City, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise as City may require.
- 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.

6. Periodic Evaluation.

- a. The City may require evaluation sessions at any time during the term of this Franchise, upon fifteen (15) days written notice to Grantee. The City may require evaluations no more than once per year during the term of this Franchise.
- 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, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.
- 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.

7. Local Technician. Grantee shall maintain a local technician assigned to the City for providing any technical Service requested by Subscribers or City. The local technician shall be available to provide technical Service to Subscribers or City from 8:00 a.m. to 5:00 p.m., Monday through Friday. However, City may request technical Service beyond said hours if technical Service is required during a meeting of the City Council.

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 Ten Thousand Dollars (\$10,000.00).
- 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:
 - i. 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 One Hundred Dollars (\$100.00) per day for each day, or part thereof, such failure occurs or continues.
 - ii. Fifteen (15) days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be Two Hundred Fifty Dollars (\$250.00) per day for each day, or part thereof, such failure occurs or continues.
 - iii. 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 Two Hundred Fifty Dollars (\$250.00) per day for each day, or part thereof, such failure occurs or continues.
 - iv. For Grantee's breach of any written contract or agreement with or to the City or its designee, the penalty shall be Two Hundred Fifty Dollars (\$250.00) per day for each day, or part thereof, such breach occurs or continues.
 - v. 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 subparagraph (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 and City may continue to draw from the letter of credit during any appeal pursuant to this subparagraph (f).
 - i. City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter.
 - ii. 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 subparagraph (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. Indemnification of City.

- a. City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the System or as to any other action of Grantee with respect to this Franchise.
- b. Grantee shall indemnify, defend, and hold harmless City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the City's exercise, administration, or enforcement of the Franchise.
- c. Nothing in this Franchise relieves a Person, except City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.
- d. Grantee shall not be required to indemnify City for negligence or misconduct on the part of the City or its officials, boards, commissions, agents, or employees, including any loss claims related to PEG access channels or programming in which City participates subject to applicable state and federal statutory limitations.

4. Insurance.

- a. As a part of the indemnification provided in Section 8.3, but without limiting the foregoing, Grantee shall file with City at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcaster's/cablecaster's liability and contractual liability coverage, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City as an additional insured, and in their capacity as such, City officers, elected officials, boards, commissions, agents and employees.

- b. The policies of insurance shall be in the sum of not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) for personal injury or death of any one Person, and Two Million Dollars (\$2,000,000.00) for personal injury or death of two (2) or more Persons in any one occurrence, One Million Five Hundred Thousand Dollars (\$1,500,000.00) for property damage to any one Person and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one (1) act or occurrence.
- c. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to City.

**SECTION 9.
SALE, ABANDONMENT, TRANSFER AND REVOCATION 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:
 - i. Grantee has violated material provisions(s) of this Franchise; or
 - ii. Grantee has attempted to evade any of the provisions of the Franchise; or
 - iii. Grantee has practiced fraud or deceit upon City.
 - b. City may revoke this Franchise without the hearing required by Section 9.2(b) 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 herein, 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. In any event, as used herein, a new "controlling interest" shall be deemed to be created upon the acquisition through any transaction or group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one (1) Person. Acquisition by one (1) Person of an interest of five percent (5%) or more in a single transaction shall require notice to City.

- c. The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following:
 - i. 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.
 - ii. 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
 - iii. 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. The Grantee shall reimburse City for all the legal, administrative, and consulting costs and fees associated with the 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. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this section, City shall have the right to purchase the System for the value of the consideration proposed in such transaction. City's right to purchase shall arise upon City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to City in writing and separate from any general announcement of the

transaction.

- h City shall be deemed to have waived its right to purchase the System pursuant to this section only in the following circumstances:
 - i. If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 9.5(g) above, its intention to exercise its right of purchase; or
 - ii. It approves the assignment or sale of the Franchise as provided within this section.
- i. 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,

**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. Grantee shall comply with the provisions of Section 631 of the Cable Act (47 U.S.C. § 551) and any other applicable state or federal regulations, throughout the term of this Franchise.

**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, except for any rights City may have pursuant to this Franchise or its police powers.

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 offence. 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 7.6 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 or City's authority to unilaterally amend Franchise provisions to the extent permitted by law.
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.

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:
 - i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
 - ii. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that have not previously been delivered.

Passed and adopted this 21st day of February, 2017.

ATTEST:

CITY OF CANNON FALLS, MINNESOTA

By: _____
City Administrator

By: _____
Mayor

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

HIAWATHA BROADBAND
COMMUNICATIONS, INC.

Dated: _____, 2016.

By: _____
Its: [TITLE]

EXHIBIT A
DESIGNATED BUILDINGS FOR SUBSCRIBER NETWORK DROPS

1. Cannon Falls City Hall/Police Department
2. Cannon Falls Library
3. All public school facilities in Cannon Falls
4. Cannon Falls Public Works
5. Cannon Falls Public Pool
6. Cannon Falls Public Safety Building

EXHIBIT B
DESCRIPTION OF SYSTEM

EXHIBIT C
FRANCHISE FEE PAYMENT WORKSHEET

REVENUE SOURCE	GROSS REVENUE	5% FRANCHISE FEE	YTD
Basic Cable Service			
Expanded Basic Cable Service			
Digital Service Tiers			
Installation			
Guide Revenue			
Equipment Rental			
Premium Services			
Pay-Per-View			
Wire Maintenance			
Late Fees			
Allocated Ad Sales			
Allocated Shopping Revenue			
Other (late fees, collection fees, etc.)			
TOTAL			

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

SUMMARY ORDINANCE NUMBER 349

AN ORDINANCE GRANTING A FRANCHISE TO HIAWATHA BROADBAND COMMUNICATIONS, INC. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF CANNON FALLS, 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

On February 21, 2017, the City of Cannon Falls adopted Ordinance No. 349, granting a franchise to Hiawatha Broadband Communications, Inc. to construct, operate, and maintain a cable communications system in the City for the purpose of providing cable service; 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, and prescribing penalties for the violation of the provisions thereof.

A printed copy of the entire ordinance is available for inspection by any person during the City Administrator's regular office hours.

Approved for publication by the City Council of the City of Cannon Falls, Minnesota, this 21st day of February, 2017.

Lyman M. Robinson, Mayor

Attest:

Ronald S. Johnson, City Administrator