

CITY OF DANUBE

ORDINANCE #101

OFFICIAL TITLE AND SUMMARY

I. TITLE. AN ORDINANCE GRANTING A FRANCHISE TO MEDIACOM MINNESOTA, LLC. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF DANUBE, 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.

II. SUMMARY. The Cable Television Ordinance grants a franchise to Mediacom Minnesota, LLC. to construct, operate, and maintain a cable communications system in the City of Danube, Minnesota, for fifteen (15) years. The Ordinance provides for regulation and use of the cable system and sets forth conditions of the Franchise including penalties for the violation of such conditions. The Ordinance requires a 3% franchise fee payable to the City and a system upgrade by December 31, 2001.

III. NOTICE. THIS TITLE AND SUMMARY HAVE BEEN PUBLISHED TO CLEARLY INFORM THE PUBLIC OF THE INTENT AND EFFECT OF THE CITY OF DANUBE'S ORDINANCE FOR A CABLE TELEVISION FRANCHISE. A COPY OF THIS ORDINANCE, IN ITS ENTIRETY, IS AVAILABLE FOR INSPECTION BY ANY PERSON DURING REGULAR OFFICE HOURS AT THE OFFICE OF THE CITY CLERK OF THE CITY OF DANUBE, 400 MAIN STREET, DANUBE, MN 56230.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DANUBE THE 26TH DAY OF APRIL, 2000.



Daniel Wersal, Mayor



Attest: Veve Mittelstadt
City Clerk

ORDINANCE NO. 101

AN ORDINANCE GRANTING A FRANCHISE TO MEDIACOM MINNESOTA, LLC. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF DANUBE, 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 Danube, 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 Renewal Proposal and application of Mediacom Minnesota, LLC (“Grantee”), and as a result of a public hearing, the City Council makes the following findings:

1. The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing, upgrading, and operating the 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 Danube, 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 Danube, Minnesota.

d. “Cable Communications 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 other forms of electronic signals in the City. System as defined herein shall not be inconsistent with the definition as set forth in Minn. Stat. §238.02, subd. 3 (1990) and 47 U.S.C. §522(6) (1993).

e. “Cable Programming Service” means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

(1) Video programming carried on the Basic Service Tier;

(2) Video programming offered on a pay-per-channel or pay-per-program basis; or

(3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service: consists of commonly-identified video programming; and is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(l)(2) (1993) and 47 C.F.R. 76.901(b) (1993).

f. “Cable Communications Service” or “Service” means the provision of television reception, communications and/or entertainment services regulated pursuant to Minn. Stat. § 238.01 et seq. as may be amended from time to time, or as otherwise

provided by this Franchise Ordinance, and distributing the same over a cable Communications System. This definition shall not include telephone services regulated pursuant to Minn. Stat. § 237.01 et seq. as may be amended from time to time.

- g. “Cable Television System” or “System” or “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:
1. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 2. A facility that serves subscribers without using the public rights-of-way.
 3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201-206 except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541) to the extent such facility is used in the transmission of video programming directly to subscribers; unless the extent of such use is solely to provide interactive on-demand services.
 4. An open video system that complies the Section 653 of the Cable Act; or
 5. Any facilities of any electrical utility used solely for operating its electrical utility system.
- h. “Class IV Cable Communications Channel” means a signaling path provided by a Cable Communications System to transmit signals of any type from a Subscriber terminal to another point in the System.
- i. “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
- j. “Drop” means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
- k. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- l. “Franchise” means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546)

issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

- m. “Grantee” is Mediacom Minnesota, LLC., its agents and employees, lawful successors, transferees or assignees.
- n. “Gross Revenue” means all revenue received directly 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 including, but not limited to, all Basic Cable Service fees, Cable Programming Services and Pay Television fees, Installation and reconnection fees, upgrade and downgrade fees, Converter rental fees, and Lockout Device fees but only to the extent such revenue has not already been included in a franchise fee computation. 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 revenues received from Internet services.
- o. “Installation” means the connection of the System from feeder cable to the point of connection including standard installations and custom installations.
- p. “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.
- q. “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.
- r. “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.
- s. “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.
- t. “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.

- u. “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.
- v. “Standard Installation” means any residential installation which can be completed using a Drop of 150 feet or less.
- w. “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. Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable Communications System in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Ordinance. It shall also be unlawful for any Person to provide Cable Communication Service in City unless such Person shall have first obtained and shall currently hold a valid Franchise Ordinance. All Cable Communications Franchises granted by City shall contain the same substantive terms and conditions.
2. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Grantee shall comply with all provisions of this Franchise. Failure of Grantee to meet its obligations and provide a System as described herein, shall be deemed a violation of this Franchise.
3. Grant of Nonexclusive Authority.
 - a. The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in city of a Cable Communication System as defined herein, and shall have the right and privilege to provide Cable Service and data service, including Internet access and related services. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below facilities available to Grantee to the extent it is technically and economically feasible to do so.
 - b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

- c. This Franchise shall be nonexclusive, and City reserves the right to grant a use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service. The terms and conditions of any such grant of use of the Rights-of-Way shall be, when taken as a whole and taking into account the planned usage of the Rights-of-Way, no less burdensome or more beneficial than those imposed upon Grantee pursuant to this Franchise.
 - d. Grantee shall have the authority to use city easements, public Rights-of-Way, and other conduits for the distribution of Grantee's System. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.
4. Lease or Assignment Prohibited. Except for commercial leased access as required by federal law, 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 9.4. Subject to restrictions on transfer and change of control in Section 9.4, Grantee may lease capacity on its Cable System for non-cable services, including, without limitation, private network services for business customers.
 5. 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.
 6. Previous Franchises. Upon acceptance by Grantee as required by Section 13 herein, this Franchise shall supersede and replace any previous Ordinance or Agreement granting a Franchise to Grantee to own, operate and maintain a Cable Communications System within City. Ordinance No. 70 is hereby expressly repealed.
 7. Compliance with Applicable Laws, Resolutions and Ordinances. 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, and eminent domain rights of City. This Franchise shall comply with the Minnesota franchise standards contained in Minn. Stat. §238.01 et seq.

In the event any City ordinance or regulation which addresses usage of the Rights-of Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 3 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 exceed burdens on similarly situated Rights-of Way users.

8. Rules of Grantee. The 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 provisions hereto, the rules of the FCC, the laws of the State of Minnesota, City, or any other body having lawful jurisdiction.

9. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a density equivalent of 30 homes per cable mile. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas.

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

If to City: City Clerk
 City of Danube
 P.O. Box 397
 Danube, MN 56230

If to Grantee: Mediacom Minnesota LLC
 Regional Manager
 1504 2nd Street Southeast
 Waseca, MN 56093

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

11. Subscriber Network Drops to Designated Public Buildings. Grantee shall provide Installation of one (1) subscriber network Drop, one (1) cable outlet, one (1) Converter, if necessary, and Basic Cable Service without charge to the following institutions and such other public or educational institutions located within one hundred fifty (150) feet of the System which City may designate.

City designates the Danube Campus School, Danube City Offices, and Danube Community Center as designated public buildings.

Any such institution located more than one hundred fifty (150) feet shall be connected if such institution agrees to reimburse Grantee for Grantee's actual costs in excess of the one hundred fifty (150) foot installation actual costs.

No redistribution of the free Basic Cable Service provided pursuant to this Section shall be allowed. Additional subscriber network Drops and/or outlets in any of the above locations will be provided by Grantee at the cost of Grantee's time and material. Alternatively, said institution may add additional outlets at its own expense, as long as such Installation meets Grantee's standards and provided that any fees for cable Communications Services are paid. Nothing herein shall be construed as requiring Grantee to extend the System to serve additional institutions as may be designated by City. Grantee shall have one (1) year from the date of City designation of additional institution(s) to complete construction of the Drop.

SECTION 3. CONSTRUCTION STANDARDS

1. Construction Codes and Permits .
 - a. Grantee shall obtain all required permits from city before commencing any construction upgrade or extension of the System, including opening or disturbance of any Rights-of-Way, or private or public property within City. Grantee shall substantially comply with all state and local laws and building and zoning codes currently or hereafter applicable to construction, 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.
 - c. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.
2. 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, or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as approved by City in the case of Rights-of-Ways and other public property, which approval shall not be unreasonably withheld. Grantee shall not be required to repair portions of Rights-or-Ways or public property not disturbed or damaged if repairing the disturbed or damaged portion returns the Rights-or-Ways or public property to the same condition as prevailing prior to grantee's work. 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, City reserves its rights to pursue reimbursement for such restoration from grantee.

3. 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. Upon request of City, Grantee shall furnish to City copies of maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities.
- 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. If the city reimburses other occupants of the Rights-of-Way, Grantee shall be likewise reimbursed.
- 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 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. Nothing contained in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

4. Undergrounding of Cable.

- a. In all areas of City where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities 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.
- b. In any area of City where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.
- c. Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.

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 substantial compliance with 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 any installations of City or of any public utility serving City.
- c. All 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 Upgrade: Minimum Channel Capacity.

- a. Grantee shall develop, construct and operate for the term of this Franchise a System providing a minimum of 750 MHz capacity and which is fully activated with the capability of delivering to all Subscribers capable of receiving them a minimum of up to 100 video programmed channels.
- b. The System may utilize a hybrid fiber-coaxial architecture. In addition, the System will be designed with the capability to transmit return signals upstream. Finally, in conjunction with the upgrade, Grantee shall replace all existing headend equipment with state-of-the-art standard frequency headend equipment which is technically necessary to meet FCC technical standards.
- c. Grantee may develop, construct and operate a System capable of providing non-video services such as high-speed data transmission, Internet access, and other competitive services which shall be activated as marketplace need dictates in the sole discretion of the Grantee, taking into consideration technical and economic feasibility over the remaining life of the Franchise.
- c. All final programming decisions remain the discretion of Grantee in accordance with applicable Law, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments in accordance with 47 CFR § 76.964, 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. Construction Timetable.

- a. Grantee shall complete all construction related to the System upgrade required by Section 4 herein by or before December 31, 2001. Failure to timely complete such construction shall be a violation of this Franchise.
- b. The System, once upgraded, shall continue to offer Service to all dwelling units serviceable prior to upgrade and shall extend Service to any area within the corporate boundaries of City which was not previously constructed which exceeds a density equivalent of 30 dwelling units per cable mile or greater.
- c. Within one hundred eighty (180) days after the commencement of the renewal term of this Franchise, Grantee shall commence application for all necessary permits, licenses, certificates and authorizations which are required in the conduct of its business. Failure to timely commence application for the aforementioned authorizations shall be a violation of this Franchise.

- d. Within ninety (90) days after commencement of the term of this renewed Franchise, Grantee will commence System design, walkout and all other preliminary construction activities related to upgrade of the system and shall give written notice thereof to City upon commencement of such activities.
3. 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.
4. 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.
5. Special Testing.
 - a. 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 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 a qualified engineer selected by City.
 - c. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within the Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond the grantee's reasonable control then the cost of said test shall be borne by City.
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 conduct of such tests.

7. Nonvoice Return Capability. Grantee is required to use cable having the technical capacity for nonvoice return communications.
8. Lockout Device. Upon the request of a Subscriber, Grantee shall provide 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). In exercising its jurisdiction to regulate any such rates, city will adhere to regulations adopted by the FCC at 47 C.F.R. § 76.900 et seq. as they may be amended from time to time.
 - b. A list of Grantee's current Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee shall give City and Subscribers written notice of any change in a rate or charge at least thirty (30) days prior to the effective date of the change. Grantee shall not be required to provide advance notice for changes relating to franchise fees, access charges or any franchise related costs consistent with federal law. Bills must be clear, concise, and understandable, with itemization of all charges.
 - c. In the event that City elects to exercise its jurisdiction over locally regulatable rates, it shall, after notice, hold a public hearing for the consideration of views of interested parties with respect to initial rates filed and any subsequent proposed changes in rates.
2. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation. 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 publicly listed toll-free telephone number 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. 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 at 46 C.F.R. § 76.309.
 - c. Subscriber requests for repairs shall be performed to the extent possible within thirty-six (36) hours of the request unless conditions beyond the control of Grantee prevent such performance.
 - d. Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), City and Grantee shall prepare and maintain written records of all complaints made to them 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, upon request, with a written summary of such complaints and their resolution. 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.
5. Subscriber Contracts. Grantee shall submit any Subscriber contract utilized to City. If no such written contract exists, Grantee shall file with the City Clerk a document completely and concisely stating the terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract 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.

**SECTION 6.
PUBLIC ACCESS PROVISIONS**

1. Public, Educational and Government Access.
- a. City or its designee is hereby designated to operate, administer, promote, and manage access (public, education, and government programming) (hereinafter "PEG access") programming on the Cable System. Grantee shall have no responsibility whatsoever for PEG access except as expressly stated in this Section 6.
 - b. Upon request of the City, Grantee shall dedicate 1 channel 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.

- c. Pursuant to Section 6.1(b) herein, Grantee shall provide to each of its Subscribers who receive all, or part of, the total services offered on the System, reception on at least one (1) specially designated access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis. The specially designated access channel may be used by local education authorities and local government on a first-come, first served, nondiscriminatory basis during those hours when the channel is not in use by the general public. During those hours that the specially designated access channel is not being used by the general public, local educational authorities or local government, the Grantee shall lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. The Grantee may also used the specially designated access channel for local origination during those hours when the channel is not in use by the general public, local educational authorities, local government or commercial or noncommercial users who have leased time. The VHF spectrum must be used for the first specially designated access channel required in the section. Grantee shall designate the channel locations of any other access channels.
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.
 - a. City shall implement rules for use of any specially designated access channels. The initial access rules and any amendments thereto shall be maintained on file with the city and available for public inspection during normal business hours.
 - b. Prior to the cablecast of any program on any PEG access channel established herein, City shall require any Person who requests access (PEG) to the System to provide written certification in a form and substance acceptable to Grantee and City which releases, indemnifies, and holds harmless City, Grantee, and their respective employees, officers, agents, and assigns from any liability, cost, damages and expenses, including reasonable expenses for legal fees, arising or connected in any way with said program.
4. 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.
5. Technical Assistance. Grantee shall at all times cooperate with City in providing technical assistance desired by City regarding PEG access programming.

**SECTION 7.
OPERATION AND ADMINISTRATION PROVISIONS**

1. Franchise Fee.
 - a. Grantee shall to City a Franchise Fee in an annual amount equal to three percent (3%) of its annual Gross Revenues. However, in the event Grantee becomes subject to “effective competition” as that term is defined in 47 U.S.C § 521.01 et seq., as amended from time to time, and specifically including Open Video Systems (“OVS”), as defined from time to time by the FCC, and /or Grantee experiences a decrease in the number of Expanded Basic Subscribers in any one year period calculated upon a yearly comparison of the number of Subscribers on December 31st of each year, the Franchise Fee shall, following ninety (90) days written notice to City, be reduced to the level of expenditure at which the competitive provider, if any, is obligated.
 - b. Payments due City under this provision shall be payable annually. The payment shall be made within ninety (90) days of the end of each of Grantee's fiscal year together with a brief report showing the basis for the computation.
 - c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.
2. Access to Records. The City shall have the right to inspect, upon reasonable notice, at any time during normal business hours, those records maintained by Grantee which relate to System operations and Gross Revenues, subject to the privacy provisions of 47 U.S.C. § 521 et seq. (“Cable Act.”).
3. Reports to be Filed with City. Grantee shall prepare and furnish to City, at the times and in the form prescribed, such reports with respect to the operations, affairs, transactions or property, as they relate to the System, which Grantee and City may agree upon.

**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 \$10,000.00 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. 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 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 canceled by reason of default of Grantee or revoked, 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. Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains after the expiration of the term of the Franchise.
- d. 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. 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 the System.
- 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 of the Franchise, except because of City's own programming.
- c. Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regrading, 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. In order for City to assert its rights to be indemnified, defended, and held harmless, City must with respect to each claim:

(1) Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;

(2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

3. Insurance.

a. As a part of the indemnification provided in Section 8.2, 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 Three Hundred Thousand Dollars (\$300,000.00) for personal injury or death of any one Person, and One Million Dollars (\$1,000,000.00) for personal injury or death of two or more Persons in any one occurrence, than Three Hundred Thousand Dollars (\$300,000.00) for property damage to any one person and One Million Dollars (\$1,000,000.00) for property damage resulting from any one 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 thirty (30) 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 after a hearing required by Section 9.2(b) herein, it is determined that:
 1. Grantee has violated material provisions(s) of this Franchise; or
 2. Grantee has attempted to evade any of the material provisions of the Franchise; or
 3. Grantee has practiced fraud or deceit upon City or Subscriber.
- 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 sixty (60) 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. Together with the notice required herein, City shall provide Grantee with written findings of fact which are 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 sixty (60) 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. After the public hearing and upon written determination by City to revoke the Franchise, Grantee may 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.
- e. Upon satisfactory correction by Grantee of the violation upon which said notice was given as determined in the City's sole discretion, the initial notice shall become void.

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.
4. Sale or Transfer of Franchise.
 - a. No sale, transfer, or fundamental corporate change of this Franchise shall take place until the parties to the sale, transfer, or fundamental corporate change files a written request with City for its approval; 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. City shall have such time as is permitted by state and federal law in which to review a transfer request.
 - c. 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.
 - d. In the event of any proposed sale, transfer, or assignment pursuant to subparagraph (a) or (b) of this Section, City shall have the right of first refusal of any bona fide offer to purchase the System. Bona fide offer, as used in this Section, means an offer received by the Grantee which it intends to accept subject to City's rights under this Section. This written offer must be conveyed to City along with the Grantee's written acceptance of the offer contingent upon the rights of City provided for in this Section.
 - e. City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:
 1. If City does not indicate to Grantee in writing, within thirty (30) days of receipt of written notice of a proposed sale, transfer, corporate change, its intention to exercise its right of purchase; or
 2. It approves the assignment or sale of the Franchise as provided within this Section.
 - f. No Franchise may be transferred if the City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by 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, or age. Grantee shall comply at all times with all other applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.

2. Subscriber Privacy.
 - a. No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

 - b. No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, or any other means, including but not limited to lists of the names and addresses of such Subscribers or any lists that identify the viewing habits of Subscribers, shall be sold or otherwise made available to any party other than to Grantee or its employees or agents for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available.

 - c. Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this Section.

SECTION 11.
UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically,

acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive services of the System without Grantee's authorization.

2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or government body or agency to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.
3. Penalty. Any firm Person, group, company, corporation, or government body or agency found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 12. MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations.
2. Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made at any time if City and Grantee agree that such an amendment will be in the public interest or is such an amendment is required due to changes in federal, state or local laws. City shall act pursuant to local law pertaining to the ordinance amendment process.
3. 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 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.

4. 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. Any 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.
5. Administration of Franchise. The City Manager 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.
6. Rights Cumulative. All rights and remedies given to City by this Franchise 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 or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
7. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.
8. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Agreement is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof.

SECTION 13.

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication; Effective Date. This Franchise shall be published in accordance with applicable 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 by executing same. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes.
- 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:
 - 1. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
 - 2. Grantee shall have continuing responsibility for this Franchise, and if Grantee be a subsidiary or wholly-owned corporate entity of a parent corporation, performance of this Franchise shall be secured by a written guarantee of the parent corporation in a form and substance acceptable to City, which shall be delivered with the executed Franchise.

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 26th day of April, 2000.

ATTEST:

CITY OF DANUBE, MINNESOTA

By: *Deva Mittelstadt*

By: *Dominic Weyers*

Its: City Clerk

Its: Mayor

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

MEDIACOM MINNESOTA LLC

Dated: *May 16, 2000*

By: *Dennis Blum*

Its: *V.P., Legal & Regulatory Affairs*