

By: Ostrow

Repealing Appendix H of the Minneapolis Code of Ordinances relating to Minneapolis Cable Communication Franchises.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Appendix H of the Minneapolis Code of Ordinances be and is hereby repealed.

~~CHAPTER 1. KBL CABLESYSTEMS OF MINNEAPOLIS LIMITED PARTNERSHIP, A MINNESOTA LIMITED PARTNERSHIP, WITH KBL CABLESYSTEMS OF MINNEAPOLIS, INC., A MINNESOTA CORPORATION, AS ITS CONTROLLING GENERAL PARTNER D/B/A PARAGON CABLE*~~

~~ARTICLE I. GRANT OF FRANCHISE AND GENERAL PROVISIONS~~

~~**Section 1. Title of ordinance.** This ordinance shall be known and may be cited as the "Minneapolis Cable Communications Franchise," hereinafter "franchise," and it shall become a part of the ordinances of the city.~~

~~**Section 2. Definitions.** For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning, unless it can be reasonably inferred that a meaning particular to the cable communications industry should be utilized, in which case meanings or definitions used by the FCC shall apply.~~

~~(a) *Alternative network* shall mean fiber optic institutional network set forth in the company's project plan dated March 12, 1990, as modified by the alternative network design description dated September 21, 1990 (Petition No. 253445).~~

~~(b) *Apartment* shall mean any building with two (2) or more residential units.~~

~~(c) *Basic service* shall mean all subscriber services subject to the regulation by the city.~~

~~(d) *Cable communications system or CATV system* shall mean a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals located in the city.~~

~~(e) City is the City of Minneapolis, a municipal corporation, in the State of Minnesota.~~

~~(f) Class IV channel means a signaling path provided by the cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.~~

~~(g) Commencement date shall mean December 1, 1982.~~

~~(h) Company is KBL Cablesystems of Minneapolis Limited Partnership, a Minnesota limited partnership ("KBLCMLP") with Time Warner Cable Inc. as its controlling general partner, the grantee of rights under this ordinance awarding a franchise, or company's legal successor, transferee, or assignee. Company is doing business as Time Warner Cable ("TWC").~~

~~Company, as defined herein, is a successor in interest to the rights held by those legal entities designated as "Company" in the previous enactments of this definition.~~

~~(i) Connection shall mean the attachment of the drop to the first radio or television set or to an electronic terminal device or converter of the subscriber.~~

~~(j) Converter means an electronic device which converts signals to a frequency not susceptible to interference with the television receiver of a subscriber, and, by an appropriate channel selector, also permits a subscriber to view all basic subscriber signals included in the basic service delivered at designated converter dial locations.~~

~~(k) Council shall mean the governing body of the City of Minneapolis.~~

~~(l) Dedication shall mean those rights-of-way maintained for the benefit of the public and controlled by the city, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a cable communications system, its structures or equipment.~~

~~(m) Drop shall mean the coaxial cable that connects the facility to the nearest feeder cable of the cable network.~~

~~(n) Easement shall mean those rights-of-way owned by the city, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a cable communications system, its structures or equipment.~~

~~(o) FCC shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.~~

~~(p) Gross annual revenues shall mean all revenue derived directly or indirectly by the company, its affiliates, subsidiaries, parent, and any person in which the company has a financial interest, from or in connection with the operation of the cable communications system governed by this ordinance; provided, however, all revenues shall include, but not be limited to, basic subscriber service, monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, income earned from deposits (but not deposits themselves), studio rental, production equipment,~~

personnel fees, and advertising revenues; however, this shall not include any taxes on services furnished by the company herein imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the company on behalf of said governmental unit. A reasonable amount may be deducted by company from gross annual revenues to reflect uncollectible accounts. Uncollectible accounts shall be determined by the company's independent auditors, applying generally accepted accounting principles. The city shall have the right to conduct an independent audit of all transactions resulting in deductions from company's gross revenues, to determine whether or not said deductions are consistent with the terms and conditions of this provision. Said audit will be conducted in accordance with the provisions of Article II, Section 13. Company shall fully cooperate with city and shall provide city with all information, books, data and other records required by city to perform an audit.

~~(q) *Installation* shall mean the connection of the system from feeder cable to subscribers' facilities.~~

~~(r) *Offering of the company or offering* shall mean that document defining the state-of-the-art cable system provided by the company to the City of Minneapolis and incorporated herein, including Addendum A.~~

~~(s) *Parental control device* is an optional mechanical or electrical capability or accessory to a subscriber's terminal which, when activated, inhibits the viewing of a certain channel or channels provided by way of the cable communications system.~~

~~(t) *Premium/pay service* shall mean those services which are not subject to regulation by the city.~~

~~(u) *Public property* is any real property owned by the city other than a highway, sidewalk, easement or dedication.~~

~~(v) *Residential subscriber service* shall mean any cable communications service provided on that part of the cable communications system's electronic frequency spectrum allocated for residential use as defined in Addendum A, section 1A(2) to the Minneapolis cable communications franchise ordinance.~~

~~(w) *Residential subscribers* shall mean any person or entity who subscribes to all or part of the residential subscriber services provided by company, whether or not a fee is paid for such service.~~

~~(x) *Residential unit* shall mean any single-family dwelling, apartment unit or apartment building recreation or common area.~~

~~(y) *Scrambler/descrambler* refers respectively to the equipment installed to the cable communications system's headend equipment and subscriber terminal used to isolate pay cable and other ancillary service channels from basic service which is accomplished by electronically distorting the signal prior to its transmission through the cable communications system and reconstituting the signal at each authorized location for subsequent display.~~

~~(z) *Sidewalk* is that portion of a highway, other than the roadway, set apart by curbs,~~

barriers, markings or other delineation for pedestrian travel, including parkways, and which is not on private lands.

~~(aa) Street shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the city for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the city which shall, within their proper use and meaning, entitle the city and the company to the use thereof for the purpose of installing or transmitting cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a cable system.~~

~~**Section 3. Grant.** The city hereby grants to the company a nonexclusive cable communications system franchise subject to all the terms and conditions as herein provided.~~

~~**Section 4. Rights and privileges of company.** The franchise granted by the city pursuant to this ordinance shall grant to the company the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the highways, sidewalks, easements, rights-of-way, dedications and other public property now in existence and as may be created or established during its term, any poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable communications system for the interception, sale, transmission and distribution of television programs and other audiovisual electrical and/or data signals and the right to transmit the same to the inhabitants of the city on the terms and conditions hereinafter set forth, subject to all applicable laws and regulations.~~

~~**Section 5. Agreement, location of agreement.** Upon adoption of this franchise and execution hereof by the company, the company agrees to be bound by all the terms and conditions contained herein.~~

~~The company also agrees to provide all services or offerings specifically set forth in the "offering of the company" to provide cable communications service within the boundaries of the City of Minneapolis; and, by its acceptance of this franchise, the company specifically acknowledges and agrees that the "offering of the company," including all promises, offers, representations and inducements contained therein is specifically incorporated by reference and made an integral part of this franchise and this ordinance. The company further agrees and acknowledges that all promises, offers, representations and inducements contained in the "offering of the company" were freely and voluntarily made to the city by the company.~~

~~The original documents listed above shall be permanently kept and filed in the office of the city clerk, and the originals or reproductions thereof shall be available for inspection by the public during normal business hours. The "offering of the company" shall be reproduced at the expense of the company and shall be available at the following locations:~~

~~(a) Office of the city clerk, three (3) copies.~~

~~(b) Cable communications officer, ten (10) copies.~~

~~(c) Municipal information library, three (3) copies.~~

~~(d) Office of the city attorney, three (3) copies.~~

~~(e) Local office of the company, two (2) copies.~~

~~(f) Main branch of the Minneapolis Public Library, one copy.~~

~~Whenever the City of Minneapolis enacts any amendment to the Minneapolis Cable Communications Ordinance which is accepted by the company, the company shall, to the extent such amendment changes any term, condition, promise, offer, representation or inducement contained in the "offering of the company," incorporate such amendment into the "offering of the company" no later than ninety (90) days after the effective date of said amendatory ordinance. The company shall, at its own expense, produce sufficient copies of those portions of the "offering" which have been affected by the enactment of the amendatory ordinance to enable distribution of amended portions of the "offering" to the locations delineated in the preceding paragraph of this section. The "offering" shall accurately incorporate any amendments or modifications made thereto. The integration and incorporation of amendatory language into the company's "offering" shall be subject to the approval of the cable officer. Furthermore, to the extent that Addendum A of the Minneapolis Cable Communications Franchise Ordinance is inconsistent with any ordinance amending this ordinance, said Addendum A shall be conformed within a reasonable time to reflect changes made in said amendatory ordinance, without further formal council action.~~

~~In the event of conflicts or discrepancies between any part of the "offering of the company" and the provisions of this ordinance, those provisions which provide the greatest benefit to the city, in the opinion of the council, shall prevail.~~

~~**Section 6. Term.** The term of the franchise to be granted by the city pursuant to this ordinance shall be for a period up to and including November 30, 2004, provided, that in the event that the extension of the franchise term provided for herein is deemed to deprive the city of rights otherwise preserved to it by the Cable Communications Policy Act of 1984 (CCPA), which are presently "grandfathered" by virtue of the fact that this franchise was enacted prior to the effective date of the CCPA, the franchise shall be only for a period of fifteen (15) years from and after December 1, 1982, and renewal shall take place through negotiation or in accordance with the renewal requirements herein or in accordance with the requirements of Section 626 of the CCPA, prior to December 1, 1997.~~

~~Any successor in interest to this franchise, initially granted by the city to Northern Cablevision of Minneapolis, Inc., shall assume and perform all of Northern Cablevision of Minneapolis, Inc.'s obligations to the city pursuant to this ordinance, the amendments hereto and acceptances hereof.~~

~~Any successor in interest to this franchise shall also assume and perform all obligations to the city entered into by any former successor in interest, transferee or assignee of those rights initially granted to Northern Cablevision of Minneapolis, Inc.~~

Said obligations are to be performed as required by this ordinance, the amendments thereto and acceptances thereof.

Section 7. Approval by Minnesota Cable Communications Board. Pursuant to Minnesota Statutes, Section 238.09, this franchise ordinance shall be subject to the approval of the Minnesota Cable Communications Board.

Section 8. Area. This franchise is granted for the below-described area of the City of Minneapolis as it exists and as the city's borders may from time to time be changed:

~~All that part of the City of Minneapolis lying northerly and easterly of the following center line: Beginning at the intersection of 45th Street West and France Avenue South; thence easterly along the center line of 45th Street West to the point of intersection with Upton Avenue South; thence southerly along the center line of Upton Avenue South to the point of intersection with 47th Street West.~~

~~All that part of the City of Minneapolis lying northerly and westerly of the following center line: Beginning at the intersection of Upton Avenue South and 47th Street West to the point of intersection with Lake Harriet Parkway; thence southerly, easterly, and northerly along the center line of Lake Harriet Parkway to the point of intersection with 46th Street West; thence easterly along the center line of 46th Street West to the point of intersection with Colfax Avenue South; thence northerly along the center line of Colfax Avenue South to the point of intersection with 45th Street West; thence easterly along the center line of 45th Street West to the point of intersection with Pleasant Avenue South; thence northerly along the center line of Pleasant Avenue South to the point of intersection with 42nd Street West; thence easterly along the center line of 42nd Street West to the point of intersection with Nicollet Avenue South; thence northerly along the center line of Nicollet Avenue South to the point of intersection with West Lake Street West; thence easterly along the center line of West Lake Street to the point of intersection with 1st Avenue South; thence northerly along the center line of 1st Avenue South to the point of intersection with 25th Street East; thence easterly along the center line of 25th Street East and the extension thereof to the point of intersection with 3rd Avenue South; thence continuing easterly along the center line of 25th Street West and the extension thereof to the point of intersection with the center line of Interstate 35W; thence northerly along the center line of Interstate 35W to the point of intersection with 24th Street East; thence easterly along the center line of 24th Street East to the point of intersection with 10th Avenue South; thence northerly along the center line of 10th Avenue South to the point of intersection with 21st Street East; thence easterly along with the center line of 21st Street East to the point of intersection with Bloomington Avenue South; thence northerly along the center line of Bloomington Avenue South to the point of intersection with Franklin Avenue East; thence easterly along the center line of Franklin Avenue East to the point of intersection with Cedar Avenue South; thence northerly along the center line of Cedar Avenue South and the Cedar Avenue Bridge to the point of intersection with 2nd Street Southeast; thence southerly and easterly along the center line of 2nd Street Southeast to the point of~~

~~intersection of 11th Avenue Southeast; thence northerly and easterly along the center line of 11th Avenue Southeast and the extension thereof to the point of intersection with the center line of Como Avenue; thence easterly along the center line of Como Avenue to the easterly boundary line of the City of Minneapolis and there terminating.~~

~~**Section 9. Franchise fees and costs.** (a) *Franchise fee.* The city shall, by ordinance, set a franchise fee of five (5) per cent of the company's gross annual revenues, which fee may be subject to renegotiation at such time as laws and regulations permit. The company and the city shall cooperate in obtaining any necessary approval from the FCC.~~

~~(b) *Advance on franchise fees.* Within sixty (60) days of the commencement date, the company shall initiate franchise fee payment to the city at the rate of twenty-five thousand dollars (\$25,000.00) for the first year, and at a minimum rate of seventy-five thousand dollars (\$75,000.00) each year thereafter, until the year in which the computed franchise payment of five (5) per cent of gross revenues first exceeds the amount of seventy-five thousand dollars (\$75,000.00). These payments are to be considered in advance of franchise payments and shall be credited in future years to those franchise fees that exceed two hundred fifty thousand dollars (\$250,000.00). Such advance fees shall not be recoverable from the city in the event that the aggregate of future franchise fees does not exceed the total amounts of the advances. Interest earned by the city on such advance payments shall not be considered a part of the franchise fee.~~

~~**Section 10. Police powers.** In accepting this franchise, the company acknowledges that its rights hereunder are subject to the police power of the city to adopt and enforce general ordinances necessary to safety and welfare of the public; and, it agrees to comply with all applicable general laws and ordinances enacted by the city pursuant to such power.~~

~~Any conflict between the provisions of this franchise and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the city, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to the company or cable communications system which contains provisions inconsistent with this franchise shall prevail only if upon such exercise, the city finds an emergency exists constituting a danger to health, safety, property or general welfare or the city finds such exercise is mandated by law.~~

~~**Section 11. Cable communications franchise required.** No cable communications system shall be allowed to occupy or use the streets of the city or be allowed to operate without a cable communications franchise.~~

Section 12. Reserved.

~~**Section 13. Use of company facilities.** The city shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the company any wires and pole fixtures that do not unreasonably interfere with the cable communications operations of the company; provided however, that the city will hold the company harmless for any damages resulting from the city's negligent installation or use~~

of said wires and/or poles or pole fixtures.

Section 14. Rates. The city shall initially set, by ordinance, rates in accordance with the company's "offering" for a cable communications franchise. Company shall not increase the initial rate for Tier I programming before December 31, 1988. The procedure to change subscriber rates for Tier I programming other than the optional pay services or programming or equivalent services of any unregulated service tiers, as available, or programming of the same type as outlined in Addendum A, Section 1C1c(3)(g), shall be in accordance with Article III, Sections 2 and 5, and increases in rates shall be based upon the concept of fair and reasonable rates to both the company and subscribers which, in the aggregate, meet all applicable costs of service provided by the company including fair return on invested capital, assuming efficient and economical management. Individual residential subscriber contracts, if any, may not exceed twelve (12) months unless after twelve (12) months the contract may be terminated without penalty at the option of the subscriber.

(b) Rates for all residential subscriber services and residential subscriber installations to be nondiscriminatory. Rates for all residential subscriber services and residential subscriber installations shall be nondiscriminatory. Rates for residential subscriber services and residential subscriber installation shall not be considered discriminatory when said rates are uniform throughout the city for all residential subscribers, are imposed in accordance with specific exemptions stated in this section or are imposed in accordance with specific exemptions contained in the Minneapolis cable communications franchise ordinances or the Minneapolis cable communications rate ordinances, such as bulk monthly rates, nonstandard installations, waiver of installation fees for thirty (30) days after service is first available to each home, etc.

For purposes of this section, nonuniform rates or charges, established for the purpose of experimentation, test marketing, research and development or promotion, shall not be considered discriminatory, providing that the procedures set out herein are complied with.

Sixty (60) days prior to the implementation of nonuniform rates or charges for the purpose of experimentation, test marketing, research and development or promotion, the company shall provide written notice to the city's cable officer, clearly identifying each proposed nonuniform rate or charge and the purpose for its implementation. An expiration date shall be included for each rate or charge established for experimentation, test marketing, research and development or promotion, not to exceed twelve (12) months from the date each such charge or rate is implemented.

If the company desires to extend any nonuniform rate or charge implemented for the purpose of experimentation, test marketing, research and development or promotion beyond the expiration date, the company shall, thirty (30) days prior to the expiration of the rate or charge, provide written notice to the city's cable officer, specifying each and every reason for requesting an extension. If the company proposes to extend a rate or charge beyond twelve (12) months from the date of implementation, the city, through its cable officer, reserves the right to require the company to make an application for exemption pursuant to the conditions set out below in this section. If the company proposes to impose nonuniform rates or charges for experimentation, test marketing, research and development or promotion similar to nonuniform rates previously

implemented by the company pursuant to this section, the city reserves the right to require company to make an application for exemption pursuant to the conditions set out below in this section.

An application to create an exemption not contained herein or within the cable franchise or rate ordinances shall be made in accordance with Article III, section 2, of this ordinance. After the city has accepted the company's application to create a new exemption in accordance with the application procedures set out in Article III, section 2, of this ordinance, the city shall make a determination to accept, reject, limit or modify the proposed exemption within one hundred twenty (120) days from the date the company's application is accepted by the city. If the city fails to act on the company's application for exemption within one hundred twenty (120) days after acceptance of company's application, the exemption shall be deemed approved and shall not be considered discriminatory. Any time limit can be waived with the consent of both the city's governing body and the company.

If the company establishes and implements rates or charges for residential subscriber services or residential subscriber installations that are not uniform throughout the city for all residential subscribers, are not established or implemented in accordance with specific exemptions stated in this section or are not established or implemented in accordance with specific exemptions contained in the Minneapolis cable communications franchise ordinances or the Minneapolis cable communications rate ordinances, said rates shall be considered discriminatory and shall also be considered a material violation of this franchise agreement and the city may impose penalties or take other action in accordance with Article III, sections 13, 14 and/or 15 of this franchise ordinance and agreement.

The city shall not arbitrarily or capriciously refuse to create an exemption requested by company in accordance with the procedures set out in this section. If the city does not approve an exemption requested by company pursuant to this section, the city shall make written findings, within thirty (30) days after such decision, stating its reasons for not approving the exemption requested by company.

Nothing contained herein shall be construed to be rate regulation in contravention of applicable state or federal law, regulation or rule or authorization for such regulation.

Nothing in Article I, section 14(b) shall be deemed to create a remedy in favor of private parties or to create a third party cause of action arising from alleged violations or noncompliance with this section, and the city shall be the exclusive authority to compel enforcement of Article I, section 14(b).

Section 15. Costs. Costs to be borne by the company shall include, but shall not be limited to, all costs incurred by the city, its staff, appointees, or elected officials in assessing the need for franchising a cable communications system, as set forth in the acceptance agreement executed by the company on April 6, 1982. Such costs also include, but are not limited to, publications of notices prior to any public meeting provided for pursuant to this franchise, and the costs incurred by the city in its study, preparation of proposal documents, evaluation of all applications, and examination of applicants' qualifications. The company shall pay to the city in full and final payment of its obligation to reimburse the city under the terms of the acceptance agreement of April

~~6, 1982, the amount of three hundred fifty thousand dollars (\$350,000.00) less all amounts previously paid.~~

~~**Section 16. Notices.** All notices from the company to the city pursuant to this franchise, unless otherwise designated, shall be to the city clerk and to the cable communications officer. The company shall maintain within the city, throughout the term of this franchise, an address for service of notices by mail. The company shall also maintain within the city, a local office and telephone number for the conduct of matters related to this franchise during normal business hours.~~

~~**Section 17. Letter of credit.** (a) Within ten (10) days of the commencement date, the company shall deposit with the city a letter of credit from a local financial institution in the amount of one hundred thousand dollars (\$100,000.00). The form and content of such letter of credit shall be approved by the city attorney. The letter of credit shall be used to ensure the faithful performance by the company of all provisions of this franchise. The letter of credit shall be used also to ensure compliance by the company with all orders, permits and directions of any agency, commission, board, department, division or office of the city having jurisdiction over its acts or defaults under this franchise, and to secure the payment by the company of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system.~~

~~(b) If the company fails to pay the city any compensation to which it is entitled under this ordinance, the city finance officer shall, upon recommendation of the cable communications officer and the city attorney, and pursuant to the due process provisions of Article III, section 14, immediately request and receive from the financial institution holding the letter of credit, payment of the amount thereof in such sums as are sufficient to recover for the city any compensation to which it is entitled under this ordinance, together with any interest that may be due as a result of the company's failure to make timely payment.~~

~~If the company fails, within ten (10) days after notice by the city, to pay the city any taxes due and unpaid or any damages, costs or expenses which the city is compelled to pay by reason of any act or default of the company in connection with this franchise, the city finance officer, upon recommendation of the cable communications officer and the city attorney, and pursuant to the due process provisions of Article III, section 14, shall, after the expiration of the ten-day period, withdraw from the financial institution holding the letter of credit an amount sufficient to recover the unpaid taxes or the damages, costs or expenses which the city is compelled to pay by reason of any act or default of the company in connection with the franchise, together with interest thereon.~~

~~If the company fails, within ten (10) days after notice by the city, to comply with any provision of this franchise which the cable communications officer and the city attorney reasonably determine can be remedied by demand on the letter of credit, and such determination is made after the company has been provided due process as set forth in Article III, section 14, the city finance officer shall immediately request and receive from the financial institution holding the letter of credit, payment of the amount thereof, together with interest accrued from the date of notice.~~

~~If the cable communications officer shall find that the company has violated one or~~

~~more of the terms, conditions or provisions of Article III, Section 13 and the company does not dispute the finding, or the finding of violation is sustained by the city council after due process as outlined in Article III, section 14, the city finance officer shall request and receive from the financial institution holding the letter of credit all penalties assessed until the company has satisfactorily remedied the term, condition or provision violated.~~

~~No penalty shall be imposed by the city against the company for any violation of this franchise without the company being afforded due process of law.~~

~~All monies drawn against the letter of credit shall be placed in the city's general fund. Interest, when accrued pursuant to Article I, section 17, shall be at the current prime rate.~~

~~(c) Whenever the city shall receive payment of any amount against the letter of credit pursuant to Article I, section 17, the company shall pay to or deposit with the financial institution with whom it maintains said letter of credit an amount sufficient to restore the letter of credit to its full value of one hundred thousand dollars (\$100,000.00) within ten (10) days after the company has been tendered delivery by registered mail, return receipt requested, of the notice from the city finance officer of the reason for the withdrawal, the date of withdrawal and the amount thereof. The finance officer and the cable communications officer shall be sent a verified statement from the local financial institution holding the letter of credit showing restoration of the letter of credit to its full value of one hundred thousand dollars (\$100,000.00) within twenty-four (24) hours after receipt by said financial institution of sufficient funds from the company to restore said letter of credit to one hundred thousand dollars (\$100,000.00).~~

~~(d) The rights reserved to the city with respect to the letter of credit are in addition to all other rights of the city, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the city may have.~~

~~(e) The letter of credit shall contain the following endorsement:~~

~~"It is hereby understood and agreed that this letter of credit may not be cancelled by the financial institution nor the intention not to renew be stated until thirty (30) days after receipt by the city clerk, city attorney and cable communications officer, by registered mail, of a written notice of such intention to cancel or not to renew. This letter of credit shall not be subject to cancellation while the company is in default."~~

~~(f) Neither withdrawal of money by the city pursuant to this provision nor wording contained herein shall be construed as a limitation of the company's right to contest penalties under Article III, section 14.~~

~~(g) The letter of credit shall be filed with the city finance officer.~~

Section 18. Bonds. ~~(a) Upon the commencement date, the company shall file with the city clerk and shall maintain, until construction is completed or until company has complied with the terms of 85-Or-153, whichever occurs last, the following bond which~~

~~shall be purchased from a company licensed to do business in Minnesota: A faithful performance and labor and material bond running to the city in the penal sum of five hundred thousand dollars (\$500,000.00) conditioned upon the faithful performance of the company of all the terms and conditions of this agreement and upon the further condition that, in the event the company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of property of the company, plus costs and reasonable attorney's fees up to the full amount of the bond.~~

~~(b) Following the completion of the bonding requirement of section 18(a) above and prior to the commencement of any new construction, the city council may require the company to file with the city finance officer and to maintain throughout the term of this agreement, a labor and material payment bond up to a sum of two hundred fifty thousand dollars (\$250,000.00), said bond to be placed with a company licensed to do business in the State of Minnesota. The company shall notify the city by registered mail, return receipt requested, of all new construction. The company may incorporate this bond coverage into the bond in and for the amount required under subsection (c) below which shall thereby satisfy this requirement.~~

~~(c) Following the completion of the bonding requirement of section 18(a) above and until such time as the company has liquidated all of its obligations with the city, the city shall require the company to file with the city finance officer and to maintain throughout the term of this agreement a faithful performance bond running to the city up to the penal sum of two hundred fifty thousand dollars (\$250,000.00) conditioned upon the faithful performance of the company of all terms and conditions of this agreement and upon the further condition that in the event the company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the city as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property to the company plus costs and reasonable attorney's fees up to the full amount of the bond. Said bond shall be purchased from a company licensed to do business in Minnesota.~~

~~(d) The bonds shall be subject to the approval of the city attorney and shall contain the following endorsement:~~

~~"It is hereby understood and agreed that this bond may not be cancelled until sixty (60) days after receipt by the city finance officer, city attorney and the cable communications officer, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew. This bond shall not be subject to cancellation by surety while the company is in default."~~

~~(e) The rights reserved by the city with respect to the bonds herein are in addition to all other rights and remedies the city may have under this franchise or any other law.~~

Section 19. Liability and insurance. ~~(a) The company agrees by the acceptance of this franchise to indemnify, keep and save the city free and harmless from liability on account of injuries or damage to persons or property arising out of the construction,~~

~~maintenance, repair and/or operation of its cable communications system or arising out of any contract entered into by the company pursuant to Article III, sections 8 and 9 of this franchise. In the event that suit shall be brought or that recourse or damages shall be sought against the city either independently or jointly with the company on account thereof, the company, upon notice by the city, shall defend the city in any such suit or action at the cost of the company, and, in the event of final judgment being obtained against the city either independently or jointly with the company, the company shall indemnify the city and pay such judgment with all costs and hold the city harmless therefrom. The company and the city shall not be liable for the acts or omissions of the Minneapolis Telecommunications Network, Inc. ("MTN") nor shall the company or the city be liable or responsible for any costs or expenses for representation, indemnification, or insurance relating to the MTN. Pursuant to this section, the company shall indemnify and insure the city or the MTN for any public interest and/or public service programming which the company may undertake pursuant to an agreement with the city or with the MTN pursuant to Article III, Sections 8 and 9.~~

~~(b) The company shall pay, and by its acceptance of the franchise specifically agrees that it will pay, all expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the city attorney or his assistants or any employees of the city or its agents.~~

~~(c) The company shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance with a company licensed to do business in the State of Minnesota insuring the city and the company with regard to all damages mentioned in subsection (a) in the minimum amount of:~~

- ~~(1) Two million dollars (\$2,000,000.00) for property damage to any one person;~~
- ~~(2) Two million dollars (\$2,000,000.00) for property damage in any one accident;~~
- ~~(3) Two million dollars (\$2,000,000.00) for personal injury to any one person; and~~
- ~~(4) Two million dollars (\$2,000,000.00) for personal injury in any one accident;
and~~
- ~~(5) Twenty-five million dollars (\$25,000,000.00) excess liability insurance for personal injury and property damage combined.~~
- ~~(6) Insurance policies obtained by company pursuant to this provision shall satisfy the insurance requirements set forth in Appendix H, Chapter 2, Article I, Section 18.~~

~~(d) The initial insurance policy or policies obtained by the company in compliance with this section must be approved by the city attorney and such insurance policy or policies, along with written evidence of payment of required premiums, shall be filed and maintained with the city finance officer during the term of the franchise, and may be changed from time to time to reflect rising liability limits. The company shall immediately~~

~~advise the city attorney and cable communications officer of any litigation that may develop that would affect this insurance.~~

~~(e) Neither the provisions of this section nor any damages recovered by the city thereunder shall be construed to or shall limit the liability of the company under any franchise issued hereunder for damages.~~

~~(f) All insurance policies maintained pursuant to this franchise shall contain the following endorsement:~~

~~"It is hereby understood and agreed that this insurance policy may not be cancelled nor the intention not to renew be stated until sixty (60) days after receipt by the city finance officer, city attorney and cable communications officer, by registered mail, of written notice of such intention to cancel or not to renew."~~

~~(g) Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the company's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.~~

~~(h) The company shall be liable and/or responsible only for claims pertaining to the construction, maintenance, and operation of its area specified in Article I, Section 8.~~

~~**Section 20. Indemnification.** The company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the city, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities and judgments for damages for the acts or omissions of the company, its officers, employees, or agents (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the city in connection therewith):~~

~~(a) Arising out of any claim based on operation of the franchise by the company or arising out of any contract entered into by the company pursuant to Article III, sections 8 and 9 of the franchise;~~

~~(b) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to MTN unless otherwise provided in an agreement between the company and the city or the company and the MTN);~~

~~(c) Arising out of the company's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the company in its business hereunder; and~~

~~(d) Arising out of any claim wherein damages or any other relief is sought as a result of the city's cable communication franchising or amendment procedure or as a result of the granting of this franchise or any amendment thereto.~~

~~The foregoing indemnity is conditioned upon the following: The city shall give the company reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the city from cooperating with the company and participating in the defense of any litigation by its own counsel at the company's cost and expense. Costs and expenses shall include the reasonable value of any services rendered by the city attorney or his assistants or any employee of the city or its agents. The city's failure to give such notice or cooperate in the representation regarding such claims, actions or proceedings shall void any and all company responsibilities and liabilities relating to the representation, indemnification or other obligations therefrom.~~

~~No recovery by the city of any sum by reason of the letter of credit required in Article I, section 17, hereof shall be any limitation upon the liability of the company to the city under the terms of this section, except that any sum so received by the city shall be deducted from any recovery which the city might have against the company under the terms of this section.~~

~~**Section 21. Affirmative action and women/minority business programs.** (a) [Generally.] The company shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, marital status, or status with regard to public assistance. The company shall comply at all times with all other requirements of federal, state and local laws and regulations, and the requirements of all orders authorized by city action relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.~~

~~(b) *Company's EEO commitment.* Throughout the term of the franchise, the company shall comply with and be subject to the nondiscrimination requirements as set forth in the Minneapolis Code of Ordinances, Chapter 25 [sic], section 139.50, as amended, and except as otherwise provided herein, the requirements of which are incorporated herein by reference. The company shall strictly adhere to the equal employment opportunity requirements of the federal government as well as to the requirements of state and local laws and regulations.~~

~~(c) *Affirmative action employment plan.* The company, its assigns, subsidiaries, subsequent purchaser, or successors shall prepare and provide to the city for its approval a written affirmative action plan within sixty (60) days after the commencement date, or in the case of an assignment, grant, or sale of the franchise, not later than thirty (30) days prior to the date of such assignment, grant or sale. The company shall not commence construction prior to the approval of such plan by the city. The company reserves the right to amend the affirmative action plan for the operations work force during the term of the franchise subject to city approval. The affirmative action plan shall include but not be limited to the following:~~

- ~~(1) Minimum employment goals which the company will use its best efforts to achieve at each level of employment in the company's operations work force during the post-construction term of the franchise. The company shall make those efforts consistent with statutory and city regulations, policies and programs, and shall further attempt to achieve a goal of twenty-five (25) per cent of its operations work force consisting of minorities and fifty (50) per cent~~

~~of its operations work force consisting of women. The goals for three (3) categories (minority men, minority women, and nonminority women) shall be reported separately. The goals for minority employment shall be reflective of a cross-section of the availability for employment of each minority segment of the population.~~

- ~~(2) Minimum employment goals which the company will use its best efforts to achieve at each level of employment in the company's construction work force throughout the construction of the system. The company, and its subcontractors, shall make those efforts consistent with statutory and city regulations, policies and programs, as amended from time to time, to achieve the city's established construction work force goals for minorities and women. The goals for three (3) categories (minority men, minority women, and nonminority women) shall be reported separately. The goals for minority employment shall be reflective of a cross-section of the availability for employment of each minority segment of the population.~~
- ~~(3) Minimum goals for the utilization of minority business enterprises (MBE's), which the company will use its best efforts to achieve, shall be established at twenty (20) per cent and for women's business enterprise (WBE's) at ten (10) per cent. The goals for women's and minority business participation shall be reported separately, shall apply throughout the post-construction term of the franchise, and shall be applicable to all capital expenditures by the company including, without limitation, contracts and purchase orders for the acquisition of goods, services (including professional services), materials, supplies and equipment used in the construction, maintenance, and operation of its cable television system. Maximum use shall be made of the city's listing of MBE/WBE businesses. "Services," for purposes of this section, shall not include purchases of programming or other premium services.~~
- ~~(4) A plan to employ and retain in employment to the maximum extent feasible persons who are handicapped.~~
- ~~(5) A training program or scholarship or funding equivalent, for available positions, which utilizes local resources and which ensures the hiring, promotion, and retention of women, minorities and handicapped persons.~~
- ~~(6) Assignment of an affirmative action coordinator by the company to develop, implement, and monitor the affirmative action plan and act as liaison with the city in all matters regarding affirmative action and women/minority business enterprise participation.~~
- ~~(7) Other provisions normally part of an affirmative action plan including but not limited to an affirmative action/EEO policy statement, methods for dissemination of the policy and plan, recruitment of employees, complaint procedure, subcontractor responsibility, and audit and reporting systems. The company shall provide to the city's affirmative action officer written reports in a form acceptable to the city of the company's compliance with the affirmative action plan. Such reports shall be submitted to the city each quarter and no later than ten (10) working days following the end of the quarter in which the~~

reported activity occurred.

~~(8) As used herein, (1) "minority" or "minorities" means Blacks, Hispanics, Asian/Pacific Islanders, American Indians, and Eskimos; and (2) "minority" or "women's business enterprise" means a business at least fifty-one (51) per cent of which is owned and controlled by minorities or women or, in the case of a publicly owned corporation, at least fifty-one (51) per cent of the stock of which is owned by minorities or women and whose management and daily business operations are controlled by one or more such individuals.~~

~~(d) *CETA eligible.* The company shall develop a plan to employ and retain in employment to the maximum extent feasible Minneapolis residents who are CETA eligible or who are eligible for other federal or state job training programs. The company shall submit such a plan as an addendum to the affirmative action plan and shall submit reports as an addendum to the affirmative action reports.~~

~~(e) *Local purchasing and hiring policy.* The company shall establish a policy of utilizing locally based firms for purchases and construction subcontracts, and employing local residents within its own operations, to the maximum extent feasible. The company shall provide the city with a written report of local purchasing and hiring achievement each three (3) months for the duration of the franchise.~~

~~(f) *Penalties.* The city, in its sole judgment, upon recommendation of the affirmative action officer, shall determine whether the company has made best efforts consistent with statutes, ordinances and other regulations to achieve the goals and objectives of this section. If the city, after due process in accordance with Article III, section 14, finds that the company has not made such best efforts, the city shall apply the following:~~

~~(1) A fine of one thousand dollars (\$1,000.00) per day for each day in which the company fails to comply with the reporting requirements set forth in this section. Imposition of said penalty shall be stayed for five (5) working days after each report is due in the event that the company should file the report during that period.~~

~~(2) A fine of not less than two thousand dollars (\$2,000.00) per month or more than twenty thousand dollars (\$20,000.00) per month for each month in which the company is otherwise determined not to be in compliance with this section, that is, whether it has made best efforts consistent with statutes, ordinances and other regulations to achieve the goals and objectives of this section.~~

Section 22. Rights of individuals. ~~(a) *Invasions of privacy and of personal rights prohibited.* In the conduct of providing its services or pursuit of any collateral commercial enterprise resulting therefrom, the company shall take any and all necessary action to prevent an invasion of a subscriber's or general citizen's right to privacy or other personal rights as such rights are delineated and defined by applicable law. The company shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.~~

~~(b) No signals, including signals of a Class IV cable communication channel, shall be transmitted from a subscriber's terminal, dwelling or place of business except as required to provide a service authorized by the subscriber. The company, the city and any other person shall neither initiate nor use any procedure or device for procuring information or data from a subscriber's terminals or terminal by any means, without the prior valid authorization of the affected subscriber. Valid authorization shall mean written approval from the subscriber which shall not have been obtained from the subscriber as a condition of service, except in those situations in which the nature of the service provided requires authorization or authorization is needed to allow for billing. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission with full knowledge of its provisions. After the first year of authorization and during the month of the year of the authorization's initial signing, the company shall, for each year said authorization is in effect without revocation, mail a notice to each authorizing subscriber informing him or her of their right to revoke said authorization for transmission from their terminal. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. It shall not be considered a penalty to terminate service in those situations where the subscriber revokes or fails to renew authorization when the nature of the service provided requires authorization or authorization is needed for billing. Such authorization shall be required for each type or classification of signals transmitted from a subscriber's terminal, dwelling or place of business.~~

~~(c) Neither the company, the city, their agents, their employees nor anyone else shall sell, provide or otherwise make available to anyone any information about subscribers obtained by monitoring transmission of any type of signal from a subscriber's terminal, dwelling or place of business, including but not limited to lists of names and addresses of subscribers or any list which identifies, by name, subscriber viewing habits or personalized data pertaining to a subscriber's use of any of the company's services without the specific, written authorization of the subscriber to which the personalized data pertains. Data or information gathered by the company as a result of the subscriber's written authorization shall be made available to the authorizing subscriber in an understandable fashion, upon request, and, where applicable, shall specify the purpose for which the information is being gathered and to whom and for what fee the information is being sold.~~

~~(d) For purposes of this section, "personalized data" shall mean the name and address of an individual subscriber directly associated with data obtained on his or her use of specified services provided by or through the company. Nothing herein shall be construed to prevent, as a normal incident of commercial enterprise, the same or availability of "nonpersonalized" or "aggregated data" which is not personalized data as defined herein.~~

~~(e) Neither the company, the city, nor any of their agents shall tap or monitor, arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever, without the prior valid authorization of the affected subscriber as defined above, except routine maintenance of the system, polling with audience participation or audience viewing surveys to support advertising research regarding viewers where individual viewer behavior cannot be identified.~~

~~(f) Written permission need not be obtained by the company from the subscriber for electronic verification of systemwide integrity or monitoring for the purpose of billing, provided that such electronic verification shall not monitor individual viewing patterns or practices without the valid authorization of the subscriber in accordance with the provisions of Article I, section 22(c).~~

~~*Additional permission of property owners may be required.* In addition to the company's right to construct its system in the city's public streets and right-of-ways under this ordinance, the company shall have the right to negotiate with utility companies and other owners (or tenants in possession) for the use of easements or servitudes. Where a property owner or tenant in possession has granted such an easement or servitude to another and when a company has acquired the right to use such easement or servitude, the company shall not be required to obtain written permission of the property owner or tenant in possession unless the company elects to do so.~~

~~*Landlord-tenant.* The company shall be required to provide service to individual units of multiple housing facilities, including but not limited to apartment buildings, condominiums, and cooperative housing, with all services offered to other dwelling units within the city, so long as the owner or management of the facility consents in writing, if requested by the company, to the following:~~

- ~~(a) To the company's providing of the service to units of the facility;~~
- ~~(b) To reasonable conditions and times for the installation, maintenance and inspection of the system on the facility premises;~~
- ~~(c) To reasonable conditions promulgated by the company to protect the company's equipment and to encourage widespread use of the system; and~~
- ~~(d) To not demand or accept payment from the company for permitting the company to provide service to the facility and to not discriminate on rental charges, or otherwise, between tenants who receive cable service and those who do not.~~

~~**Section 23. Public notice.** A public hearing before the appropriate city council committee shall be held prior to passage of any amendment to this ordinance. Notice of such hearing shall be by publication at least once in a local newspaper of general circulation at least seven (7) days prior to the hearing, and, commencing on the fifth day prior to the hearing, the company shall notify its subscribers of the hearing by announcement on at least one channel of its cable communications system, between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days. Such announcement shall be made on the most appropriate nonpremium/nonpay channel on which such announcement is feasible subject to approval of the cable communications officer. The city clerk shall be responsible for delivering the text of all announcements to the company in time for proper scheduling.~~

~~**Section 24. Service of process and consent to jurisdiction.** The company, KBL and KBLCOM shall designate an agent within the city upon whom process against them may be served on behalf of the city or any other party in enforcing this franchise or in asserting any other right or claim. The company, KBL and KBLCOM, for such purposes, and any other purposes, hereby consent to, and submit to, the laws, jurisdiction and~~

courts of the State of Minnesota; provided, however, that KBLCOM and KBL shall not be construed to be doing business within the State of Minnesota solely as a result of this provision.

Section 25. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 26. Captions. Section captions or headings are intended solely to facilitate reading and reference to the provisions of this franchise ordinance and shall not affect the meaning or interpretation of any provision.

Section 27. Certificate of confirmation. The franchise shall cease to be of any force and effect if the company fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the Minnesota Cable Communications Board; provided, however, that the company may operate its cable communications system while the application for renewal is under consideration by the board.

Section 28. Time of the essence. Whenever this ordinance shall set forth any specific time for an act to be performed by or on behalf of the company or the city, such time shall be deemed of the essence. Any failure of the company to perform within time allotted shall always be sufficient grounds for the city to invoke an appropriate penalty including possible revocation of the franchise, pursuant to the due process procedures of Article III, section 14.

ARTICLE II. CABLE COMMUNICATIONS SYSTEM EXTENSION, OPERATION, STANDARDS AND PROCEDURES

Section 1. Commitment by company. The commitment of the company is contained in the "offering of the company." The company agrees to perform all services or offerings set forth in its "offering," including all promises, offers, representations and inducements contained therein. The company further agrees that certain portions of its "offering" or a summary thereof may be set forth as Addendum A to this franchise ordinance and that said Addendum A shall contain those portions of the "offering of the company" or a summary thereof deemed by the city and the company to be of most use to the subscriber. The fact that certain portions of the company's "offering" or a summary thereof are reproduced as Addendum A shall not be construed so as to make it appear that those portions of the "offering" reproduced in Addendum A have more significance or importance than portions not reproduced. The company specifically reaffirms that the entire "offering of the company" is incorporated into this ordinance by reference. In the event of conflict or discrepancies between any parts of the "offering of the company" and Addendum A, those provisions which provide the greatest benefit to the city, in the opinion of the city council, shall prevail.

Section 2. Service availability and record request. The company shall provide cable communications service throughout the entire franchise area pursuant to the provisions of this franchise and shall keep a record for at least three (3) years of all requests for service received by the company in areas where service is being provided.

This record shall be available for public inspection at the local office of the company during regular office hours.

Section 3. Cable communications system construction. ~~(a) Construction map and schedule.~~

~~(1) Map and plan.~~ The company has submitted a construction plan which is incorporated herein by reference and made a part hereof in Addendum A. The plan consists of a map of the entire franchise area and clearly delineates division of the city into five (5) construction zones per franchise area, indicating the date upon which construction shall be completed in each zone as defined in Addendum A and Article II, section 3 herein. The construction plan shall be made available for public inspection during normal business hours at the main office of the company at the company's expense.

~~(2) Construction permits.~~ Notwithstanding any other provision of this ordinance, the company shall make a good faith and diligent effort to obtain all necessary permits and clearances within a reasonable time. Within sixty (60) days after the commencement date, the company shall apply for all permits and clearances needed to begin construction or maintain, upgrade or otherwise change the cable system. Company shall pay for all permits acquired from city through July 1, 1988, after which payment for future permits shall be considered to be part of the franchise fee. Nothing contained herein shall relieve company of their obligation to furnish insurance, bonds or such other securities or assurances as may be required in the Minneapolis Code of Ordinances for obtaining permits, clearances, etc.

~~(3) Start of construction.~~ Substantial construction in accordance with the plan submitted by the company shall start within seven (7) months after the commencement date.

Within three (3) months and five (5) months after the commencement date, the company shall report to the city and may request a change in its construction start date.

~~(4) Completion of individual construction zones.~~ The company shall complete construction of individual zones set forth below pursuant to the construction plan in Addendum A:

TABLE INSET:

<i>Map Construction Zone</i>	<i>Completion Date (months from commencement date)</i>
I	No later than 12
II	No later than 18
III	No later than 24
IV	No later than 30
V	No later than 36

Within each zone, the company shall install and deliver residential service to all residents requiring a standard installation within sixty (60) days after all residential distribution cable within the zone has been energized and the resident has ordered such service.

~~(5) Completion of system construction.~~ The company shall complete system construction so as to offer residential service to all residents requiring a standard installation within thirty-six (36) months after the commencement date. Consistent with sound engineering practice, construction shall be essentially concurrent in all areas of the city, so that no geographic portion of the city is discriminated against in receiving prompt service.

~~(b) Early construction and extension.~~ Nothing in this section shall prevent the company from constructing the system earlier than planned. However, any delay in the zone or system construction beyond the times specified in this section for commencement of construction, for completion of construction for any zone, or for completion of construction, shall require application to and consent by the city council. The city may not arbitrarily withhold consent for delay when the company has shown good cause for such delay provided that the city may attach reasonable conditions to ensure performance. Good cause for delay shall be presumed when the company shows, to the satisfaction of the council, that such delay was beyond its control or was not foreseeable. The company shall notify the city as soon as possible of any anticipated or actual delay.

~~(c) Penalties for delay in construction.~~ The city may at its sole option apply any of the following penalties in connection with delays in completion of construction in accordance with the schedules due to causes which are within the company's reasonable control or which are reasonably foreseeable.

~~(1) Failure to commence construction.~~ If, after the construction starting date indicated in subparagraph (a)(3) above, the company has not substantially commenced construction and thereafter the company does not substantially commence construction within thirty (30) days of written notice of such failure from the city, subject to the procedural provisions of Article III, section 14, the city may impose a financial penalty of up to ten thousand dollars (\$10,000.00) per day for each day the company fails to substantially commence construction, or may commence termination proceedings, or both.

For any schedule delay that may occur, the burden of proof shall be on the company to demonstrate that such delay was beyond its reasonable control or was not reasonably foreseeable.

~~(2) Failure to complete construction zone.~~ Upon a failure to meet construction completion schedules for the first four (4) construction zones as specified herein and in Addendum A, the city may impose a penalty of up to five hundred dollars (\$500.00) per day for each construction zone violation up to six (6) months and up to one thousand dollars (\$1,000.00) per day penalty, or reduce the duration of the franchise on a month-for-month basis for each month of failure to comply, or termination of the franchise, or both, for violations greater than six (6) months, subject to the due process provisions

~~of Article III, section 14. Construction shall be deemed to be completed when the system is energized so as to offer residential service to all residents within the zone who require a standard installation.~~

~~(3) *Failure to complete construction of system.* Upon a failure to complete construction of the system as set forth in Addendum A and offer services to all residents of the city as set forth in Article II, section 3 and Addendum A, and after thirty (30) days' notice by the city, the city may reduce the duration of the franchise on a month-for-month basis for each month of failure to comply, or the city may impose a fine up to a maximum of ten thousand dollars (\$10,000.00) per day for each day of violation, or both, subject to the due process provisions of Article III, section 14. In addition, where the company has failed to complete construction of the system as set forth in Addendum A and Article II, section 3 herein, and after sixty (60) days' notice by the city, the city may terminate the franchise, subject to the provisions of Article III, section 15.~~

~~(4) *Noncumulative penalties.* The company shall pay all penalties imposed in accordance with the procedures required in Article III, section 14, for the phase of construction for which said penalty is imposed. When construction of said phase is completed, and if the company has paid all construction penalties properly imposed, the commencement and completion dates for any and all subsequent construction phases shall be adjusted to follow immediately thereafter. No fines shall be levied which result from delays in completion of an earlier phase if subsequent phases are completed within their initially proposed schedules, commencing from the new and adjusted date.~~

~~(d) *Service to residences mandatory.* The company shall offer residential service to all residences within the City of Minneapolis. However, should the company determine that provision of service to a residence or an area would be uneconomic, the company may apply to the cable communications officer for a temporary waiver from the requirement that such service be provided. Such application shall be in writing and shall set forth the factors upon which the company determined that provision of the service in question would be uneconomic.~~

~~In determining whether to grant such a temporary waiver, the cable communications officer shall consider, among other factors:~~

~~(1) The amount of the additional cost involved in providing the service;~~

~~(2) The likelihood of substantial short-term population growth in the area surrounding the residence; and~~

~~(3) Any other circumstances which would assist the company in recovering its additional investment required to provide the service without unduly burdening other subscribers.~~

~~Such a waiver shall not be unreasonably withheld. The city may reconsider its decision to issue the temporary waiver at any time upon thirty (30) days notice to the company.~~

~~If the cable communications officer should deny the company's request for a temporary waiver, such denial shall be in writing and state the reason(s) therefor. The company shall have the right to appeal the decision to the city council within ten (10) days of receipt of the cable communications officer's written order. Such appeal and any subsequent proceedings shall be governed by the due process provisions contained in Article III, section 14 herein.~~

~~(e) *New development underground.* In cases of new construction of property development where utilities are to be placed underground, the developer, utility or property owner shall give the company reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the company's installation of conduit, pedestals and/or vaults, and laterals to be provided at the company's expense, provided that such reasonable notice shall be given in writing to the company prior to the obtaining of a permit by the developer, utility or property owner from the city for the work to be performed. The company shall also provide specifications as needed for trenching.~~

~~Costs of trenching and easements required to bring service to the development shall be borne by the developer, utility or property owner, unless the work to be performed by the company shall necessitate expenditures by the developer, utility or property owner solely to accommodate the facilities of the company in which case the company shall bear that part of the cost; except that if the company fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer, utility or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by the company. Except for the notice of the particular date on which trenching will be available to the company, any notice provided to the company by the city of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the company prior to approval of the preliminary plat request.~~

~~(f) *Special agreements.* Nothing herein shall be construed to prevent the company from serving areas not covered under this section upon agreement with developers, property owners or residents.~~

~~(g) *Areawide interconnection of CATV systems.*~~

- ~~(1) The company shall comply with the rules and regulations established by the Minnesota Cable Communications Board (Chapter 15, 4 M.C.A.R. Sections 4.220 through 4.229) and cooperate with any interconnection corporation, regional interconnection authority or city, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the city.~~
- ~~(2) Upon city request, the company shall negotiate in good faith to interconnect the cable television system with neighboring cable systems. Within three (3) months of a city request, the company shall report to the city the results of the negotiations. Notwithstanding the above, the company is committed to, and shall, interconnect the cable system with all cable systems operated in the~~

~~Minneapolis-St. Paul metropolitan area no later than six (6) months after a finding by the city that such interconnection is in the public interest and consistent with applicable Minnesota statutes.~~

~~(h) *Construction cost.* The company has estimated that the cost of the cable television system during the initial build period years will be forty-three million dollars (\$43,000,000.00).~~

~~(i) *Completion of MCDA residential multiple dwelling units.* The city shall use its good faith efforts to negotiate and execute bulk monthly service contracts with the company for multiple dwelling units owned by the Minneapolis Community Development Agency ("MCDA"). The MCDA shall provide reasonable access to its residential facilities and their occupants for maintenance, marketing, installation, and door-to-door sales by the company. The company shall construct and offer service pursuant to Article II, [section] 3(d) to MCDA residential multiple dwelling units which have executed wiring agreements with the company.~~

Section 4. Company services. The company shall provide at least the following services:

~~(a) *Standard installation.* Standard installation consisting of an aerial drop, not exceeding one hundred fifty (150) feet, from a single pole attachment to the customer's residence. Drops in excess of one hundred fifty (150) feet, concealed wiring, and all underground drops shall be charged according to the rate ordinance. An underground drop of not more than one hundred fifty (150) feet shall be a standard installation only in the event that all utilities are underground.~~

~~(b) *Project prewiring.*~~

~~(1) The company shall provide service to prewired projects according to the terms and conditions and at such rates provided in the rate ordinance.~~

~~(2) The company shall review and approve methods and materials, supply specifications, technical assistance, and material according to the rate ordinance.~~

~~(3) The company shall prewire a project upon request according to rate ordinance.~~

~~(c) *Deposits.* The company may require a deposit for materials and services according to the rate ordinance.~~

~~(d) *Additional outlets.* The company shall provide additional outlets as customers may request according to the rate ordinance.~~

~~(e) *Buildings of public, private and parochial schools and colleges and local governmental units.* The company shall provide installation and service to buildings of public, private and parochial schools and colleges; and local governmental units according to the rate ordinance.~~

~~(f) *Transfers.* When a current customer moves from one address within the franchised area to a second address within the franchised area and there is no lapse in service, the company shall transfer service at a rate according to the rate ordinance.~~

~~(g) *Reconnection.* The company shall restore service to customers wishing restoration of service provided the customer shall first satisfy any previous obligations owed and after the customer makes payment of the reconnection charge and the customer pays a deposit, if one is required, in accordance with the rate ordinance.~~

~~(h) *Relocation or extension of cable.* When a current customer requests that an extension or relocation of said customer's cable service be made, the company shall do so according to the rate ordinance.~~

~~(i) *Service calls.* The company shall provide cable communication test and repair services to customer's premises pursuant to the rate ordinance.~~

~~**Section 5. Construction and technical standards.** (a) *Compliance with construction and technical standards.* The company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinance, construction standards, governmental requirements, FCC board regulations, and detailed standards submitted by the company. In addition, the company shall provide the city, upon request, with a written report of the results of the company's annual proof of performance tests conducted pursuant to FCC standards and requirements.~~

~~(b) *Additional specifications.* Construction, installation and maintenance of the city's cable communications system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.~~

~~The company shall at all times comply with:~~

- ~~(1) National Electrical Safety Code as prepared by the Institute of Electrical and Electronics Engineers;~~
- ~~(2) National Electrical Code of the National Fire Protection Association;~~
- ~~(3) Bell Telephone System's Code of Pole Line Construction, also known as Bell System Manual of Construction Procedures; and~~
- ~~(4) Other applicable federal, state and local zoning regulations.~~

~~In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the company may have equipment located.~~

~~Any antenna structure used in the cable communications system shall comply with construction, marking and lighting of antenna structure, required by the United States Department of Transportation.~~

~~All working facilities and conditions used during construction, installation and maintenance of the cable communications system shall comply with the standards of the Occupational Safety and Health Administration.~~

~~Leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC Rules and Regulations shall govern.~~

~~The company shall provide standby power generating capacity at the cable communications system control center and at all hubs. The company shall maintain standby power system supplies, rated at least at four (4) hours' duration, throughout the distribution networks.~~

~~The company shall provide the system capability which will permit the city or civil defense authorities to transmit an emergency alert signal to all participating subscribers. The company shall also provide an emergency audio override capability to permit the city to interrupt and cablecast an audio message on all channels simultaneously in the event of disaster or public emergency. This capability shall be fully operational at the initial activation date of the cable system. The company shall designate a channel which will be used for emergency broadcasts of both audio and video. The company shall also provide emergency text captioning, on at least five (5) channels on each cable, or to the extent technically feasible. The company shall cooperate with the city in the use, operation of and testing of the emergency alert override system.~~

~~(c) *State-of-the-art system.* Pursuant to Addendum A, section 1, which requires the company to provide a state-of-the-art cable system and franchise ordinance, the city shall have the right, prior to commencement of construction of the system, to determine whether the state-of-the-art has changed and, at its discretion, to require such changes be incorporated into the offering and the franchise ordinance where technologically and economically feasible. Failure by the company to begin or complete a state-of-the-art cable system as may be determined by the city shall be grounds for termination and forfeiture pursuant to the due process provisions of Article III, section 14.~~

~~(d) *Applicable technical standards.* The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart R (Technical Standards), shall apply. However, because of the recent development of interactive and other innovative services, modifications of FCC Standards, as presented in the specifications below, are considered necessary to meet system service objectives.~~

~~(1) *Forward signals; Class I channels.* The cable system shall have a technical capacity of four hundred forty (440) Mhz. The combined forward trunk and distribution system shall deliver signals to each subscriber's TV receiver that will meet or exceed the following specifications at the mean system temperature plus or minus seventy (70) degrees Fahrenheit. This shall include the effects of drop cables, interior splits, and any terminal equipment such as descramblers and set-top converters.~~

~~a. *Carrier-to-noise ratio:* 44 dB~~

- ~~b. Carrier-to-synchronous-cross-modulation ratio: 56 dB~~
- ~~c. Carrier-to-second-order-beat ratio: 66 dB~~
- ~~d. Carrier to composite triple beat: 53 dB~~
- ~~e. Envelope delay: 150 ns maximum~~
- ~~f. Hum modulation: 45 dB~~
- ~~g. Ghosts and echoes: 40 dB~~
- ~~h. Subscriber visual signal level at subscriber terminal: 0 dB MV~~
- ~~i. Channel frequency response: ± 1.5 dB~~
- ~~j. Adjacent channel level variation: 2 dB~~

~~(2) Reverse signals. The reverse channels shall have the capability of providing return signals from any subscriber tap to the extreme end of any geographic area without noticeable signal degradation or interference.~~

- ~~a. The system capability shall include transmission of color video, black and white video, and both low and high speed data, whether analog or digital.~~
- ~~b. If necessary to prevent the build-up of noise and distortion products, the area shall be divided into sections, and subtrunks run to central hub within the area. Equivalent alternatives such as addressable taps or switches may be utilized.~~

~~(3) No more than +54 dBmV output level shall be required out of any customer interface device to meet the system specifications.~~

~~(4) Where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward transmission.~~

~~(5) For Class I signals, the signal delivered to the subscriber's TV receiver, after being transmitted to the headend, processed and retransmitted down a forward channel, shall meet the specifications of subsection (a) above.~~

~~(e) Performance testing. The company shall perform all tests necessary to determine compliance with the technical standards of FCC 76.601.~~

~~(1) Tests shall include the following, as a minimum:~~

~~Preconstruction,~~

~~Initial proof of performance,~~

~~Annual compliance tests,~~

~~Tests in response to subscriber complaints,~~

~~Monthly monitor.~~

~~Written records of test results shall be maintained and shall be available for city inspection upon request.~~

~~(2) The tests for the cable system shall be performed periodically, at intervals of no greater than every six (6) months, a minimum of twenty (20) subscriber television receivers, located throughout the service area. At least eight (8) of these locations shall be at the far end of the distribution trunk cables. The tests shall be witnessed by representatives of the city, and written test reports shall be submitted to the city. If more than ten (10) per cent of the locations tested fail to meet the performance standards, the company shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated for at least twenty (20) different locations. If a second test results in failure of more than ten (10) per cent, the city may at its sole option reduce affected subscriber rates by an amount reasonably related to the degraded service, unless the circumstances of the failure are caused by conditions which are beyond the company's reasonable control or which are not reasonably foreseeable.~~

~~**Section 6. System construction standards.** (a) *Authorization to commence construction.* Within ninety (90) days of the granting of the franchise, the company shall apply for all necessary governmental permits, licenses, certificates and authorizations.~~

~~Permission by the company for commencement of construction of the cable communications system authorized herein is granted herewith, after the company has given the department of inspections, the cable communications officer and the city engineer reasonable written notice of the proposed construction thereof, so as to coordinate all work between the city and the company. Construction may commence subject to the approval of the department of inspections and the city engineer.~~

~~Neither the review of plans by the city nor the granting of any licenses, permits, certificates, authorizations, approvals, etc., shall be construed as a guarantee or warrant by the city of the company's communications system. The company shall not assert the fact that the city has preformed any prior review of its plans or exercised any ministerial function in granting permits, licenses, certificates, authorizations, approvals, etc., as a defense against its obligations to indemnify and hold the city harmless pursuant to Article I, section 20.~~

~~The city engineer and the department of inspections shall have the right to request that the company shall furnish all plans, drawings and technical data in sufficient detail so as to enable each city department to fulfill its obligations under this franchise and other applicable laws and regulations.~~

~~(b) *Power to contract.* Upon grant of this franchise to construct and maintain a cable communications system in the city, the company may enter into contracts with any public~~

~~utility companies or any other owner or lessee of any poles located within or out of the city to whatever extent such contract or contracts may be expedient and of advantage to the company for use of poles and posts necessary for proper installation of the system, obtain right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the company's receiving antennas, obtain permission from Federal Aviation Administration to erect and maintain antennas suitable to the needs of the system and its subscribers, and obtain whatever other permits a city, county, state or federal agency may require. In the construction, installation and maintenance of its system, the company will use steel, cable, materials and electronic devices, all of specialized and advanced design and type. In the construction and operation of its system, the company will employ personnel and subcontractors with training, skill and experience in electronics and communications. It shall not be deemed a breach of this provision or of this franchise if the company shows that material or personnel are not available to the company due to war or similar official national emergency, or if the company receives the consent of the city council.~~

~~(c) *Interference with persons and improvements.* The company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the city may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.~~

~~(d) *Minimum interference with public ways.* All transmission and distribution structures, lines and equipment erected by the company within the city shall be located so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places.~~

~~(e) *Restoration to prior condition.* In case of any disturbance of pavement, sidewalk, driveway, foundation or other surfacing, the company shall, at its own cost and expense and in a manner approved by the city, replace and restore all paving, sidewalk, driveway, foundation or surface of any street or alley disturbed, in as good condition as before said work was commenced and in accordance with standards for such work set by the city engineer. If the company fails to promptly restore any street or public place in accordance with this provision, the city shall have the right to put such street or public place back into good condition at the expense of the company and the company shall, upon demand, pay to the city the cost of such work done or performed by the city, together with an additional sum as liquidated damages to be determined by the city.~~

~~(f) *Relocation of the facilities.* Whenever the city shall, during the period of this franchise, undertake any public improvement or authorize any project or action for a public purpose, which affects cable communications equipment, it shall direct the company to remove or relocate its wires, conduits, cables, vaults, pedestals, manholes, poles, and improvement, project or action for a public purpose at the company's expense, upon reasonable notice to the company of the undertaking of such public improvement, project or action for a public purpose by the city.~~

In addition, the company is put on notice of and accepts the provisions of section

~~99.850 of the Minneapolis Code of Ordinances governing the placement of overhead distribution lines underground and agrees that for the purposes of placing overhead distribution lines underground, section 99.850 will apply to the company.~~

~~(g) *Interference with utilities.* The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone facilities or obstruct or hinder in any manner the various utilities serving the residents of the city. All such poles or other fixtures placed in any street shall be placed close to the line of the lot abutting on said alley, and then in such manner as not to interfere with the usual travel on said streets, alleys and public ways.~~

~~(h) *Easements.* All necessary easements over and under private property shall be arranged for by the subscribers or the company.~~

~~(i) *Maps and records.* The city shall have the right to inspect and examine at any reasonable time and upon reasonable notice, the property owned or used, in part or in whole, by the company. The company shall keep accurate maps and records of all of its facilities and make available such maps and records as requested by the city pursuant to the provisions of Article II, section 13. In addition, the company shall keep current records and plats on all underground facilities they own or operate. Such plats and records are to be available to all utilities and the city immediately upon request.~~

~~**Section 7. System maintenance standards.** (a) *Cooperation with building movers.* The company shall, on the request of any person holding a building mover permit, issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, rising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.~~

~~(b) *Tree trimming.* The company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the city. The city shall have the right to do the trimming requested by the company at the cost of the company. Regardless of who performs the work requested by the company, the company shall be responsible, shall defend and hold the city harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.~~

~~(c) *Maintenance of system.* The company shall erect and maintain all parts of the system in good condition throughout the entire franchise period.~~

~~(d) *Efficient service and repairs.* The company shall render efficient service, make repairs and adjustments promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use. All costs incurred in making such repairs and adjustments shall be borne by the company except as otherwise provided for in this ordinance.~~

~~(e) *Interference with reception.* The company shall not allow its cable or other operations to interfere with broadcast reception of persons not served by the company.~~

Section 8. Continuity of service mandatory. ~~(a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the company are honored. In the event that the company elects to overbuild, rebuild, modify, or sell the system, the company shall undertake all reasonable efforts to ensure that all subscribers receive continuous, high quality, uninterrupted service regardless of the circumstances.~~

~~In the event of a change of franchisee, or in the event a new operator acquires the system, the company shall cooperate with the city, new franchisees or operator in maintaining continuity of service to all subscribers. During such period, the company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.~~

~~(b) Six (6) months' notice shall be given by either party of an intent to discontinue all or any part of the operation of the system upon expiration of this franchise, and if such notice is not given at least six (6) months prior to such expiration date, the franchise shall be deemed to be extended for six (6) months and thereafter for another six (6) months' period (but not to exceed a total of twelve (12) months). The company agrees that upon final termination of this franchise or any extension thereof, the city shall have the right to continue operation of the system for a period not to exceed twenty-four (24) months. If prior to the end of such period in which the city is exercising the right to continue operation of the system, the city has initiated proceedings to acquire the system, then such period shall be extended for such further time as may be required to complete acquisition. The city may designate an operator or assume operation itself for such purpose and shall collect the revenues from such operation, shall pay the costs of such operation, and shall pay to the company fair compensation for the temporary use of the system after the franchise has expired.~~

Section 9. Complaint procedure. ~~(a) During the term of this franchise, and any renewal thereof, the company shall maintain within the city a local business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billing disputes, and similar matters. The office must be reachable by a local, toll-free telephone call, and provide the city with the name, address and telephone number of a person who will act as the company's agent to receive complaints regarding quality of service, equipment malfunctions, billings, and similar matters. The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. The company shall provide the means to accept telephone complaint calls in person twenty-four (24) hours a day, seven (7) days a week. Any service complaints from subscribers shall be investigated and acted upon within twenty-four (24) hours. Any service complaint shall be resolved within three (3) calendar days. Upon notification by a subscriber, the company shall credit a subscriber's account on a pro rata basis for loss of service exceeding forty-eight (48) continuous hours within a thirty-day period. An accurate and comprehensive file shall be kept by the company of any and all complaints regarding the cable system. A procedure shall be established by the company by the time of installation of the cable system to remedy complaints quickly and reasonably to the satisfaction of the city. Complete records of the company's actions in response to all complaints shall be kept. These files and records shall remain open to the public during normal business hours.~~

~~(b) A summary of complaints, identifying the number and nature of complaints and their disposition, in a form approved by the city, shall be completed for each month and submitted to the city by the tenth day of the succeeding month.~~

~~(c) An annual opinion survey report which identifies satisfaction or dissatisfaction among subscribers with cable communications services offered by the company shall be submitted to the city on or before March thirty-first of each year. The surveys required to make said report shall be conducted in conformity with such requirements, including supervision, as the city may prescribe.~~

~~(d) As subscribers are connected or reconnected to the system, the company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the city office responsible for administration of the franchise with the address and telephone number of the office.~~

~~(e) "Complaints" for purposes of this section do not include individual requests for service arising from partial systemwide malfunction; requests for service where no in-home visit is required; connection, disconnection, or reconnection requests; changes in services or programming received; or similar requests which do not relate to the quality of present service, equipment malfunction, or billing disputes between customer(s) and the company.~~

~~**Section 10. Company rules and regulations.** The company 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 the company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. Any rules or regulations promulgated pursuant to this section shall be published at the company's expense and be readily available to subscriber.~~

~~**Section 11. Payment of fees and penalties.** (a) The franchise fee and any other cost or penalties assessed shall be payable except as otherwise specified in this franchise agreement, quarterly, to the city finance officer's office and the company shall file a complete and accurate verified statement of all gross receipts within the city during the period for which said quarterly payment is made, and said payment shall be made to the city not later than forty-five (45) days after the expiration of the quarter when due.~~

~~(b) The city shall have the right to inspect the company's income records and the right to audit and to recompute any amounts determined to be payable under this ordinance; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the company's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within thirty (30) days following written notice to the company by the city which notice shall include a copy of the audit report.~~

~~(c) In the event that any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the annual rate of twelve (12) per cent.~~

Section 12. Transfer of ownership or control. ~~(a) This franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person nor shall ownership or control of the controlling general partner be transferred or assigned in any manner without the prior written consent of the city council and in compliance with applicable rules of the Minnesota Cable Communications Board. The proposed assignee must show financial responsibility as determined by the city and must agree to comply with all provisions of the franchise.~~

~~(b) The company shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the company. The word "control" as used herein includes not only major stockholders, general partners and limited partners, but also includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the company shall make the franchise subject to cancellation unless and until the city shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into the qualification of the prospective controlling party, and the company shall assist the city in any such inquiry.~~

~~(c) The consent or approval of the council to any transfer of the company shall not constitute a waiver or release of the rights of the city in and to the streets, and any transfer shall by its terms be expressly subordinate to the terms and conditions of this franchise.~~

~~(d) In the absence of extraordinary circumstances, the city will not approve any transfer or assignment of the franchise prior to substantial completion of construction of the proposed system.~~

~~(e) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to this franchise agreement.~~

~~(f) The hypothecation, pledge or mortgage of both the franchise and its assets by the company as security for debt shall not require city approval. In the event of hypothecation, pledge or mortgage of both the franchise and its assets by company, the company shall provide notice to the city of its action and fully disclose the terms and amounts of any hypothecation, pledge or mortgage to the city's cable officer within fifteen (15) days of any such hypothecation, pledge or mortgage.~~

Section 13. Reports and availability of books and records. ~~(a) Annual report. Within one hundred twenty (120) days following the close of each company fiscal year, during the term of the franchise, the company shall submit a written annual report, in a form approved by the city, including, but not limited to, the following information:~~

~~(1) A summary of the previous year's (or, in the case of the initial reporting year,~~

~~the initial year's) activities in development of the cable system, including but not limited to services begun or discontinued, total number of subscribers, subscribers added or discontinued during the reporting year, and user participation;~~

- ~~(2) A financial statement including a statement of income, revenues, operating expenses, value of plant, annual capital expenditures, depreciation with an attached depreciation schedule, interest paid, taxes paid, balance sheets, and a statement of sources and application of funds, covering all years since the beginning of the franchise;~~
- ~~(3) A current statement of costs of construction by component categories;~~
- ~~(4) A projected income statement, balance sheet, statement of sources and applications of funds, and statement of projected construction for the next two (2) years;~~
- ~~(5) A reconciliation between previously projected construction and/or financial estimates, as the case may be, and actual results;~~
- ~~(6) A list of the company's officers, members of its board of directors, and other principals of the company;~~
- ~~(7) A list of stockholders or other equity investors holding five (5) per cent or more of the voting interest in the company and its parent, subsidiary and affiliated corporations and other entities, if any;~~
- ~~(8) To the extent that money, other than profits, is paid to a parent, subsidiary, or other person affiliated with the company, the amounts of such payments and the basis for computation of such amounts (e.g., the basis for computing any management fees or share of "home office" overhead);~~
- ~~(9) The company shall maintain its books and records solely for the information of the city in such detail such that revenues and expenditures, including direct and indirect investment and costs associated with institutional capacity and services shall be easily identifiable. The company shall provide a clearly stated analysis of the current and periodic to-date investment in and results of operations of the institutional network. The company also agrees to make its financial records available to inspection by the city, upon request.~~

~~(b) *Annual plant survey report.* Simultaneously with the annual report required by subsection (a), the company shall submit to the city an annual plant survey report which shall be a complete survey of the company's plant and a full report thereon. Said report shall include, but not be limited to, an appropriate engineering evaluation including suitable electronic measurements and shall be conducted in conformity with such requirements, including supervision, as the city may prescribe. Said report shall be in sufficient detail to enable the city to ascertain that the technical standards of the FCC and/or the franchise are achieved and maintained. At the city's request, but no more often than once per three (3) years, the company and the city shall agree upon the appointment of a qualified independent engineer to evaluate the technical performance~~

of the cable system. The cost of such evaluation shall be borne by the company.

~~(c) *Other petitions and applications.* The company shall submit to the city copies of all pleadings, applications, reports, communications and documents of any kind, submitted by the company to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating to its cable television operations within the franchise area. The company shall submit such documents to the city simultaneously with their submission to such courts, agencies and bodies; and within five (5) days after their receipt from such courts, agencies and bodies. The results of any tests required by the FCC shall be filed within ten (10) days of the conducting of such tests with the Minnesota Cable Communications Board. The company hereby waives any right to claim confidential, privileged or proprietary rights to such documents. However, information otherwise confidential by law and so designated by the company, which is submitted to the city shall be retained in confidence by the city and its authorized agents and shall not be made available for public inspection.~~

~~(d) A copy of each of the company's annual and other periodic public reports, if issued, and those of its parent, subsidiary and affiliated corporations and other entities, if issued, as the city requests and is reasonably appropriate, shall be submitted to the city within five (5) days of grantor's request or upon availability of the report after request.~~

~~(e) The company shall submit to the city copies of all income tax returns and reports which are filed with the local, state or federal governments pertaining to its cable system in the franchise area within five (5) days of the date on which such reports are filed.~~

~~(f) Within one hundred twenty (120) days after the end of each fiscal year of KBLCOM, the company shall submit a written annual report for its guarantor which shall include a consolidated financial statement which includes a statement of income, revenues and expenses, a statement of cash flow and balance sheet and footnotes, thereto, as of and for the period ended with its most recent fiscal year end, in sufficient detail to facilitate reasonable financial analysis of the consolidated financial statements. The consolidated financial statements shall have been certified as to their fair statement in conformity with generally accepted accounting principles, consistently applied, by the guarantor's chief financial officer. This certification shall be accompanied by a letter from the certified public accountants ("CPA") who are currently auditing the books and records of the guarantor's parent company. The letter shall state that, based upon the CPA's reading of the consolidated financial statements presented to the city by the guarantor and the results of the procedures utilized in their audit of the guarantor's parents' consolidated financial statements, that nothing came to their attention that would lead them to believe that the guarantor's certified consolidated financial statements were not prepared in accordance with general accounting principles, consistently applied. The guarantor shall provide such additional detail of the consolidated financial statements and other financial and operating data as may be reasonably required and necessary to facilitate financial analysis.~~

~~(g) The company shall submit to the city such other information or reports in such forms and at such times as the city may request or require.~~

~~(h) The company shall allow the city to make inspections of any of the company's~~

~~facilities and equipment at any time upon one day's prior notice, or, in case of emergency, upon demand without prior notice.~~

~~(i) The company shall maintain an office within the franchise area and shall produce upon reasonable notice complete and accurate books and records. The city shall have the right to inspect at any time upon reasonable notice during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the company which relate to the operation of the cable system, provided where volume and convenience necessitate, the company may require inspection to take place on company premises. Access to the aforementioned records shall not be denied by the company on the basis that said records contain confidential, privileged, or proprietary information except that grantee shall not be required to disclose any information regarding projects undertaken strictly for research and development.~~

~~All reports required under this section, except as otherwise herein provided, shall be available for public inspection in the city clerk's office during normal business hours. Company, KBL and KBLCOM recognize that certain information submitted is open to public inspection and subject to the Minnesota Government Data Practices Act, M.S. Sec. 13.01, et seq. Company, KBL, and KBLCOM are responsible for familiarizing themselves with this law. Certain data is protected from disclosure under this law, such as security information, trade secret information and labor relations information. Company, KBL and KBLCOM understand and agree that in the event that the city receives a request from another party to disclose any information which the company, KBL and KBLCOM deem to be protected under the Minnesota Government Data Practices Act, the city will tender to company, KBL and KBLCOM the defense of any request to compel disclosure. By submitting information that company, KBL and KBLCOM deem exempt from disclosure, company, KBL and KBLCOM agree to defend and hold harmless the city from any claim for disclosure, including but not limited to the city's expenses, including out-of-pocket costs and attorney's fees incurred by the city, as well as any judgment entered against the city for any damages or for the attorney fees or costs and disbursements of the party requesting disclosure from the city.~~

~~(j) All reports required under this section, except as otherwise herein provided, shall be available for public inspection in the city clerk's office during normal business hours.~~

~~(k) The refusal, failure, or neglect of the company to file any of the reports required under this section, or as the city may direct, shall be deemed a material breach of the franchise, and shall subject the company to all penalties and remedies, legal or equitable, which are available to the city under the franchise or otherwise, pursuant to the due process provisions of Article III, section 14.~~

~~(l) Any materially false or misleading statement or representation made knowingly by the company in any report required under the franchise shall be deemed a material breach of the franchise and shall subject the company to all penalties and remedies, legal or equitable, which are available to the city under the franchise or otherwise, pursuant to the due process provisions of Article III, section 14.~~

~~—(m) All reports and records required under this or any other section shall be furnished at the sole expense of the company.~~

~~(n) The company shall retain the services of a marketing consultant at its own expense to review and comment upon the marketing plan dated April 18, 1986, as submitted to the city. A copy of the consultant's report shall be submitted to the city no later than October 1, 1986. Commencing on January 1, 1987, the company shall submit marketing status reports to the city on a quarterly basis in the form prescribed by the cable office. Such quarterly reports shall include, but not be limited to new initiatives of the company.~~

~~**Section 14. Removal of cable communications system.** At the expiration of the term for which this franchise is granted unless such franchise is renewed, or upon its termination as provided herein, the company shall forthwith, upon notice by the city, remove, at its own expense, all designated portions of the cable communications system from all highways, streets, sidewalks, easements, dedications and public property within the city. If the company fails to do so, the city may perform the work at the company's expense. A bond or bonds placed with a company licensed to do business in the State of Minnesota in the total amount of five hundred thousand dollars (\$500,000.00) shall be furnished to cover this expense; said bond to be approved by the city attorney. Said bond may be incorporated, at the company's option, as part of the bonds required of the company in Article I, section 18. However, nothing contained in Article I, section 18, shall be construed as reducing or waiving the requirement of the company to maintain coverage of five hundred thousand dollars (\$500,000.00) under this provision.~~

~~The bond required under this provision shall contain the following endorsement:~~

~~"It is hereby understood and agreed that this bond may not be cancelled until sixty (60) days after receipt by the city attorney, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew. This bond shall not be subject to cancellation by the surety while the company is in default."~~

~~**Section 15. Abandonment of service.** Notwithstanding the provisions of this franchise, the company shall not abandon any cable communications service or any portion thereof without having given three (3) months' prior written notice to the city and the Minnesota Cable Communications Board. The company shall not abandon any cable communications service or any portions thereof without compensating the city for damages resulting to it from such abandonment. For purposes of this section, "service" shall mean the aggregate cable communications system.~~

ARTICLE III. ADMINISTRATION AND REGULATION

~~**Section 1. Rules and regulations.** (a) In addition to the inherent powers of the city to regulate and control this franchise, and those powers expressly reserved by the city, or agreed to and provided for herein, the right and power is hereby reserved by the city to promulgate such additional reasonable regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this franchise.~~

~~(b) The city may also adopt such regulations at the request of the company upon application to the city.~~

~~(c) Any rules or regulations adopted pursuant to this section shall be published at the company's expense and be readily available to subscribers.~~

~~(d) The city reserves the right to determine how the access channels will be administered.~~

Section 2. Application procedure. ~~Except as otherwise specifically provided for herein, following the adoption and acceptance of this franchise, all applications by the company effectuating a change in this ordinance, including but not limited to changes in rates, services, programming of activated and nonactivated channels, construction schedules, transfer of ownership, proposed changes in regulations or ordinances, importation of distant broadcast signals, etc., and as otherwise authorized by or made pursuant to this franchise, shall be made and processed by giving notice to the city in accordance with the following procedure:~~

~~(a) Applications shall be in a form prescribed by the city and shall contain sufficient facts and information acceptable to the city.~~

~~(b) An application may be rejected for inadequacy by the city if it contains an inadequate description of what is being applied for, is not in an acceptable form, or contains insufficient facts and information for adequate consideration.~~

~~(c) A rejection of an application for inadequacy shall be in writing by notice which shall state the deficiencies. The notice shall not be construed to limit rejection for further and different deficiencies on subsequent applications.~~

~~(d) Upon acceptance, city staff shall review the application. The staff may submit the application to council if it deems the application adequate and complete and in need of no further staff study or report. The city shall give notice to the company within thirty (30) days of acceptance if it will study the application prior to submission to the council. The study shall be completed within forty-five (45) days after notice is given to the company by the city unless such period is extended for up to an additional forty-five (45) days by motion of the council or a longer period of time by agreement with the company.~~

~~At the conclusion of the study, city staff may submit the application, study and other information, documents and exhibits to the council for consideration.~~

~~At the expiration of the study period, if the matter has not been placed upon the council agenda, the company may notify the city clerk in writing to place the application upon the council agenda for the next regular meeting, and the city clerk shall do so.~~

~~(e) During the study period, the company shall fully cooperate with the city in providing information and documents which are related to and reasonably necessary in the proper evaluation of the application. Failure of the company to so cooperate or the company's unreasonable delay in providing information and documents shall be grounds for a reasonable extension by the council of the study period or, if either the lack of cooperation or the delay substantially impairs the study, the council may summarily deny the application.~~

- ~~(f) Upon submission to the council, it shall review the application and any studies, information and documents which accompany it. The council shall approve or deny the applications based on the record within thirty (30) days, unless a public hearing is set. If the council desires a public hearing, or if one is required, the council shall set a public hearing within thirty (30) days. Notice of the public hearing shall be given in accordance with Article I, section 23.~~
- ~~(g) At a public hearing pursuant to this application process, the council may hear reports from staff, citizens' advisory committee, consultants and the public. The council shall provide a reasonable but not unlimited opportunity for rebuttal. The council may impose reasonable time limitations on verbal presentations which may be selectively waived to facilitate adequate evaluation of the application.~~
- ~~(h) If, at the hearing, the council determines that additional information or documents are necessary to adequately evaluate the application, it may continue the hearing from time to time pending augmentation of the record. A continuance shall not exceed fifteen (15) days at a time.~~
- ~~(i) At the close of the hearing the council shall, within thirty (30) days, approve, deny or modify the application. Notice of denial and the grounds therefor may be in writing if requested. Reasonable conditions in furtherance of the purpose and intent of the franchise may be attached by the council to an approval or modification and may be acted upon by the company upon acceptance in writing by the company.~~
- ~~(j) Any time limit may be waived by consent of both the council and the company.~~
- ~~(k) Nothing contained herein or within this ordinance shall be construed as limiting the right of the city to require that an application be filed by the company whenever the council reasonably determines that the company is undertaking any change in this ordinance which negatively affects subscriber services.~~

~~**Section 3. Annual review of system performance.** (a) On or about June 1, 1984, and each year thereafter throughout the term of the franchise, the city and the company shall meet publicly to review the performance and quality of service of the cable television system pursuant to this ordinance and federal and state cable television regulations. The reports required in Article II, section 9 regarding subscriber complaints, the records of performance tests and the opinion survey report shall also be utilized in the review. In addition, any subscriber may submit complaints during the review meetings, either orally or in writing, and these shall be considered.~~

~~(b) Within thirty (30) days after the conclusion of the system performance review meetings, the city shall issue findings with respect to the adequacy of system performance and quality of service. If violations of the ordinance or federal, state or local regulations are found, the city may direct the company to correct the violations within a reasonable period of time.~~

~~(c) Failure of the company, after due notice, to correct the violations shall be considered a material breach of the franchise, and the city may, pursuant to the due process provisions set forth in Article III, section 14, levy any reasonable penalty within~~

the scope of Article III, section 13 which is appropriate.

Section 4. System and services review. (a) *Review.* To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced, modern system for the city, the city and the company shall comply with the following system and services review provisions:

- (1) ~~The city may hold a system and services review session on or about September 1, 1985. Subsequent system review sessions shall be scheduled by the city each three (3) years thereafter. All such review sessions shall be open to the public, and notice given in accordance with Article I, section 23.~~
- (2) ~~Sixty (60) days prior to the scheduled system and service review session, the company shall submit a report to the city indicating the following:~~
 - a. ~~All cable system services that are being provided by the company on an operational basis, excluding tests and demonstrations, to cities in the United States with populations above two hundred fifty thousand (250,000), that are not provided to the city.~~
 - b. ~~A plan for provision of such services, or a justification indicating why such services are not feasible for the city.~~
- (3) ~~Topics for discussion and review at the review sessions shall include but shall not be limited to, services provided, rate structure, free or discounted services, application of new technologies, system performance, need for additional institutional capacity, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints.~~
- (4) ~~Either the city or the company may select additional topics for discussion at any review session.~~

(b) *Findings.* ~~Not later than sixty (60) days after the conclusion of each system and services review session the city shall issue findings, including specifically a listing of any cable services not then being provided by the company to the city that are considered feasible. The city may direct the company to provide such services within a reasonable time and under reasonable rates and conditions if it is technologically and economically feasible to do so. Failure to provide such directed services may be considered a breach of the franchise, subject to penalties as provided in Article III, section 13, and subject to the due process provisions set forth in Article III, section 14.~~

Section 4.5. Reserved.

Section 5. Rate and fee setting. (a) ~~Following the adoption of this franchise, the city shall adopt by ordinance a rate for the franchise fee and approve a schedule for maximum rates for services which the company may charge.~~

(b) ~~The city may regulate all cable system rates when not prohibited by applicable~~

law.

~~(c) An application for an increase in the schedule of rates shall be filed in accordance with procedures established in Article III, section 2. The application shall be supported by statistical and other proof indicating that the existing rate is inadequate and unreasonable and that the proposed increases therein are required to enable the company to render service to fulfill its obligations under this ordinance and to derive a reasonable profit therefrom.~~

~~The company's petition for a rate increase shall include the following financial reports which shall reflect the operations of the Minneapolis system only:~~

- ~~(1) Balance sheet;~~
- ~~(2) Income statement;~~
- ~~(3) Statement of sources and applications of funds;~~
- ~~(4) Detailed supporting schedules of expenses, income, assets, and other items as may be required; and~~
- ~~(5) Statement of current and projected subscribers and penetration.~~

~~The company's accounting records applicable to the cable system shall be available for inspection by the city at all reasonable times. The city and its agents shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the Minneapolis operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the city with the information needed to make accurate determinations as to the financial condition of the system. All financial statements shall be certified as accurate by an officer of the company.~~

~~(d) The city may consider all relevant factors including but not limited to the following in determining whether to approve, modify or disapprove the company's requests for rate increases during the term of this franchise:~~

- ~~(1) The company's substantial fulfillment of all material requirements of the franchise.~~
- ~~(2) Quality of service, as indicated by the number and type of service complaints, the company's response to complaints, and the results of periodic system performance tests.~~
- ~~(3) Prevailing rates for comparable services in other cable systems of similar size and complexity.~~
- ~~(4) Rate of return as compared to businesses of equivalent risk. The rate of return shall be calculated on a cumulative basis for all system revenues and costs including services such as pay television that may be exempt from local~~

~~rate regulation. Upon request of the city, the company shall promptly provide, from the company, its parent company and any subsidiary company, all information as shall be reasonably necessary to determine system revenues and costs.~~

- ~~(5) Performance and capital expenditures by the company in introducing new services and expanding the cable system's capability, as compared to other systems of similar size and complexity.~~
- ~~(6) The original cost of the system less depreciation determined on a straight line actual life basis.~~
- ~~(7) Rates currently fixed in other cable television franchises for comparable service areas.~~

~~(e) Change in rates. Changes in rates for any service regulated by the city shall be granted to the company no more often than each two (2) years. The city may require the company to apply for a rate review at any time. Upon receipt of a rate increase request, the city shall schedule a public hearing prior to arriving at a decision. The city may request relevant financial and other information necessary to determine the justification for the requested increase. Notwithstanding any provision of this ordinance to the contrary, within one hundred twenty (120) days after receipt of the rate increase request, the city, expressed by city council resolution, shall approve the request in full, approve the request in part, modify, or disapprove the request. In any event, the city shall provide findings as to the basis for its decision. If no city action has occurred within one hundred twenty (120) days after receipt of the rate increase request, the request shall be deemed to have been approved.~~

~~(f) Notwithstanding any provision in this ordinance to the contrary, the company may after completion of the rate guarantee period set forth in the rate ordinance, make an application to increase regulated rates by the annual increase in the Consumer Price Index made for the Minneapolis metropolitan area, or an annual five (5) per cent, whichever is less. Such application to increase regulated rates must designate which rates the company wishes increased and must be accompanied by the same supporting documentation as set out for rate increases in Article III, section 5(c). Any rate increases applied for under this provision must be applied for in the year in which it is to be effective and increases based on the Consumer Price Index or five (5) per cent must not be cumulative or retroactive. In the event the Consumer Price Index for the Minneapolis metropolitan area, as compiled by the United States Department of Labor, Bureau of Labor Statistics, is no longer available, then another similar, generally recognized index may be substituted on approval of the city council.~~

~~(g) Upon receipt of a request for increases in rates under this section, the city shall have thirty (30) days within which to determine whether it wishes to review more fully the request for increases in accordance with the procedures for rate studies and hearings set out in Article III, section 5, of this ordinance. In the event that the council takes no action within thirty (30) days, said rates shall become effective.~~

~~(h) Changes in rates taking place with or without council action shall supersede the rates set out in this ordinance after their effective date. The city clerk shall prominently~~

~~post a detailed listing of current rates and the company shall inform all subscribers of the new rates in writing.~~

~~(i) Nothing herein or within this ordinance shall limit the authority of the city to regulate any rate when such regulation is not specifically prohibited or preempted by federal or state law or regulation.~~

Section 6. Supervision of the franchise. ~~(a) The city council shall designate a person to serve as cable communications officer.~~

~~(b) The cable communications officer shall perform such duties and have such responsibilities as are specified by resolution of the city council or by this ordinance. Such duties and responsibilities may include, but shall not be limited to, the following:~~

- ~~(1) Serve as liaison between the city, the Minneapolis Citizens' Advisory Committee on Cable Communications and the company;~~
- ~~(2) Monitor the company's adherence to construction and installation schedule and line extension policy;~~
- ~~(3) Assure compliance of applicable laws and ordinances;~~
- ~~(4) Monitor operational standards as contained in this ordinance;~~
- ~~(5) At the council's direction, arrange tests and analysis of equipment and performance;~~
- ~~(6) Monitor road and traffic disruptions for construction and repair purposes;~~
- ~~(7) Assure continuity in service;~~
- ~~(8) Receive, examine and recommend action on the monthly log of citizen complaints;~~
- ~~(9) Assist in evaluating uses of access channels;~~
- ~~(10) Prepare an annual report to the council;~~
- ~~(11) Receive for examination all data and reports required by this ordinance, and, where appropriate, forward said data to the various interested or affected city departments;~~
- ~~(12) Make recommendations to the council regarding fines for violations of this ordinance;~~
- ~~(13) Bring to the attention of the city attorney any situation where potential recourse may be sought from the letter of credit in accordance with Article I, section 17;~~

- ~~(14) Monitor regulatory and legislative actions at the state and federal level;~~
- ~~(15) Request information from the company on behalf of the various city departments;~~
- ~~(16) Monitor, evaluate, report to the council and approve minor changes in equipment or design that deviate from the company's "offering" to ensure that substituted equipment or design is equal to or better than that specified by the company in its "offering."~~

~~(c) The cable communications officer shall from time to time set a schedule of penalties which may be assessed against the company pursuant to Article III, sections 13, 14. The company may appeal the setting of such schedule to the city council whose determination shall be final and binding upon the city.~~

Section 7. Minneapolis Citizens' Advisory Committee on Cable Communications. There may be established a citizens' advisory committee having the duties and responsibilities which the council may from time to time assign to it.

Section 8. Public usage of the cable system. ~~(a) The city shall utilize a portion of the cable system to provide and develop cable services that will be in the public interest. The city shall establish a public non-profit corporation to be known as the Minneapolis Telecommunications Network, Inc. ("MTN"), to receive and allocate support funds and other considerations provided by the company, and/or others in furtherance of this purpose. The MTN's responsibilities under the ordinance, including sections 8 and 9, shall be in lieu of any obligation on the part of the company to develop and provide cable service in the public interest except as specified elsewhere in the ordinance. Any obligation by the company to provide public interest and/or public service programming shall be created by a contract between the city and the company or the MTN and the company.~~

~~It shall be the purpose of MTN to administer the channel capacity provided to it by the city and to provide programming and services which are in the public interest or constitute a public service. The responsibility of MTN to provide public interest programming grows from the responsibility of the company to make channel capacity available for governmental, educational, leased and public access pursuant to prior FCC regulation, and present Minnesota Statutes and MCCB rules and to promote, support, and develop programming and services created by local residents, groups, institutions, businesses and governments. Company has delegated this responsibility to the city. It shall be the primary responsibility of MTN to provide public interest programming. MTN shall not compete against the company in offering services except as otherwise set forth herein since such competition would not only be inconsistent with the purpose of MTN as set forth by its articles of incorporation but would also be inherently unfair since MTN experiences none of the operating costs (such as debt retirement, repair and upkeep of the system, etc.) facing the company.~~

~~The company agrees to cooperate with MTN and the city to assist it in providing access and local origination programming of the highest quality. The company also agrees to provide public interest and/or public service programming under the terms of any contract between the city and the company or between the MTN and the company.~~

~~No contract or agreement entered into between the company and the city or between the company and MTN shall limit the right of MTN to provide access or local origination programming.~~

~~(b) For the purpose of this section, the following terms shall be defined as follows:~~

- ~~(1) "Premium service" shall mean any service for which a charge is imposed above the monthly charge for basic cable service.~~
- ~~(2) "Program or service generally available to cable operators" shall mean a program or service commercially produced by a third party and nationally or regionally distributed, regardless of the method of distribution, to cable systems, other telecommunications delivery systems or for other methods of public presentation.~~
- ~~(3) "Nonprogram service of a type generally available to cable operators" shall mean a nonprogram service commercially provided by a third party which is either distributed or provided nationally or regionally or is substantially similar to a nonprogram service which is distributed or provided nationally or regionally and which is available to cable systems, or other telecommunications delivery systems.~~

~~(c) The MTN shall have the right to carry: Programs or services generally available to cable operators; nonprogram services of a type generally available to cable operators; and premium services under the following conditions:~~

- ~~(1) Prior to offering such a program or service, or such a nonprogram service, the MTN shall, in writing, indicate its interest to the company. The company shall have ninety (90) days from the receipt of such notification from MTN to offer or contract to offer the program or service. In the event that the program or service is not operational at the time the company receives such notification from MTN, the company shall have ninety (90) days from the time that the program or service becomes operational to offer or contract to offer the program or service. In the case of a program which is not part of an ongoing service or series and which is to be shown on a one-time basis, the company shall have thirty (30) days from the receipt of such notification from MTN to offer or contract to offer the program.~~
- ~~(2) If the company fails to offer or contract to offer such program or service within the time frame established in Article III, section 8(c)(1) herein, MTN may offer such service or program to the affected subscribers via MTN channels subject to any of the following limitations which may apply:
 - ~~a. Premium services or premium programs which are generally available to cable operators and nonprogram services of a type which are generally available to cable operators shall not be provided by MTN without prior written consent of the company. Such consent shall not be unreasonably withheld.~~
 - ~~b. MTN shall offer only programming and services and nonprogram services~~~~

~~that are of a public interest or public service nature.~~

- ~~c. If the program or service is generally available to cable operators, or the nonprogram service is of a type which is generally available to cable operators, the MTN shall discontinue its carriage of such a program or service within ninety (90) days of notification from the company of its intent to offer the program or service. In the event that MTN has entered into a contract to provide such a program, service or nonprogram service and the contract has not expired within ninety (90) days of the notification, the company shall either wait until the expiration of the contract prior to providing the program, service or nonprogram service assuming the responsibilities of MTN under the terms of its contract. However, in no event shall MTN enter into a contract for such a program, service or nonprogram service for a term in excess of one year without prior approval of the company, which approval shall not be unreasonably withheld.~~
- ~~d. If a program or service is not generally available to cable operators (local origination or access), or if the nonprogram service is of a type which is not generally available to cable operators (local origination or access), the company shall have the right to offer the program or service as a joint venture with MTN at any time beginning one year after the introduction of the program or service by MTN. Such a joint venture shall involve an equal sharing of all costs and profits from the date of the agreement, unless otherwise agreed upon by MTN and the company. However, MTN shall not offer professional sports programming involving teams located in the Minneapolis-St. Paul metropolitan area or athletic programming involving extramural teams from the Minneapolis and St. Paul campuses of the University of Minnesota without prior written consent of the company, which consent shall not be unreasonably withheld.~~
- ~~e. If more than thirty-three (33) per cent of the programming on the service in question is already provided on a service or services currently provided by the company, or will be provided on a service or services which the company has agreed to provide pursuant to the conditions of Article III, section 8(c)(1) herein, then the proposed service or programming shall be ineligible for carriage by MTN absent written permission from the company. However, such consent shall not be unreasonably withheld.~~
- ~~f. Under no circumstances shall MTN enter into an agreement to carry a program or service that is generally available to cable operators or a nonprogram service which is of a type generally available to cable operators or to lease channel capacity under terms which are more favorable to a lessee than those contained in similar agreements with major MSO's operating in markets comparable to the City of Minneapolis. Under no circumstances shall MTN provide such a program or service or nonprogram service to subscribers or lease channel capacity at rates which materially differ from those charged for similar services or programs or channel capacity by the company in the City of Minneapolis.~~

~~(3) If MTN should want to offer a program or service on a pay-per-view basis, MTN shall notify the company of its interest at least thirty (30) days before the scheduled presentation of the service or program. The company shall then be given fifteen (15) days to notify MTN as to whether it will offer the program or service. However, the MTN's right to offer said program or service shall be subject to all other procedures and limitations as set forth in this section. The company may waive the notices required by this subsection upon timely request by MTN in the event that such program or service becomes available less than thirty (30) days before its scheduled presentation.~~

~~[(d) Reserved.]~~

~~(e) If MTN produces or acquires a program or service which is not generally available to all cable operators (local origination or access) or a nonprogram service which is of a type not generally available to all cable operators (local origination or access), there shall be no prohibition imposed by the company against MTN distributing or otherwise reselling the programming or service or nonprogram service.~~

~~(f) *Company support of nonprofit corporation.*~~

~~(1) The company shall make available equipment or other capital assets in the amount of one million and five hundred thousand dollars (\$1,500,000.00) to be used in the furtherance of public interest and/or public service programming. A contract between the city and the company or between MTN and company may stipulate that all or some of that equipment and/or capital assets be under the control of the company for the purposes of providing public interest and/or public service programming for a set period of time. Equipment or other capital assets shall be provided by the company pursuant to a capital budget and on a schedule to be approved by MTN and the city. The equipment and capital assets provided to MTN shall be provided pursuant to a service agreement to be approved by MTN. Provision of such equipment and other capital assets shall constitute the total responsibility of the company for capital investment in access facilities, studios, and production equipment. Any equipment or assets made available to the company pursuant to an agreement under this section shall be used for public interest and/or public service programming. Any contract for equipment and/or capital assets between the city and the company may delegate to the city the right to hold capital assets in escrow for either MTN or for company equipment replacement and maintenance.~~

~~(2) The company shall pay an amount equal to five (5) per cent of the company's annual gross revenues to the city to provide an operating appropriation in furtherance of public interest and/or public service programming. A contract between the city and the company or between MTN and the company may stipulate that all or some of that amount be retained by the company for the purpose of providing public interest and/or public service programming during any set period of time.~~

~~Such payments shall constitute the total responsibility of the company for access and related activities.~~

- ~~(3) The city shall have the right to reallocate a portion of the capital budget to the operating budget and a portion of the operating budget to the capital budget in the furtherance of public interest and/or public service programming.~~
- ~~(4) The company shall dedicate the following system capacity for public use at no cost (except where indicated) throughout the life of the franchise:~~
- ~~a. Twenty five (25) per cent of the downstream and upstream channel capacity of the residential network.~~
 - ~~b. Forty (40) per cent of the downstream and upstream channel capacity of the institutional network.~~
 - ~~c. Fifty (50) per cent of the downstream and upstream channel capacity of any interconnection links to neighboring cable systems and additional channel(s) when these channels are in use eighty (80) per cent of the time between the hours of 8:00 a.m. and 10:00 p.m. during any consecutive six-week period.~~
 - ~~d. Access to all satellite down-link programming and services. (Users of programming will be responsible for obtaining any required rights and paying fees for actual use of programming, where applicable.)~~
 - ~~e. Access to existing satellite up-link capacity if established pursuant to Addendum A, under reasonable conditions and fees, and when the city determines that user demand warrants it.~~
 - ~~f. Access to residential interactive data transmission capacity, when and if provided on a city-wide basis, under reasonable conditions and fees not to exceed the actual additional cost to the company.~~

~~The city may permit the company to lease, at a nominal charge, any of the channel capacity dedicated to MTN and not being utilized by the MTN. For the purposes of public interest and/or public service programming a contract between the city and the company or between MTN and the company may stipulate that the company program some or all of the channels and capacity described in Article III, section 8(e)(4).~~

~~If the cable system capacity is expanded in the future, the above percentages shall continue to apply.~~

~~The dedicated capacity shall be provided to MTN free of charge (except where indicated) for channel and system equipment usage. The MTN or company through agreement with the city or MTN shall provide the necessary channel capacity to provide for all access channel requirements pursuant to state and federal law and regulation. The city will have the right to lease unused channel capacity to others to provide services and/or programs which have been determined to be in the public interest and which neither the company nor MTN are providing. Prior to entering into such a lease, the city shall offer the company the option to enter into a lease with the prospective~~

~~lessee under the same terms and conditions.~~

~~The company's personnel shall cooperate with the city, MTN and other local public and nonprofit agencies which produce programming and services suitable to a cable system.~~

~~MTN shall indemnify, keep and save the city and the company free and harmless for claims arising out of MTN's operation and responsibilities under Article III, sections 8 and 9. In the event that suit shall be brought or that recourse or damages sought against either the city or the company, or both, either independently or jointly with MTN, MTN shall indemnify the city and/or the company and pay such judgment with all costs, including reasonable attorneys' fees, and hold the city and/or the company harmless. MTN shall maintain liability insurance with a company licensed to do business in the State of Minnesota, naming the city and the company as additional insured, with regard to all claims or damages set forth above in a minimum amount of:~~

- ~~a. Five hundred thousand dollars (\$500,000.00) for damage to any one person;~~
- ~~b. One million dollars (\$1,000,000.00) for damage in any one accident;~~
- ~~c. One million dollars (\$1,000,000.00) for personal injury to any one person;~~
- ~~d. One million dollars (\$1,000,000.00) for personal injury in any one accident; and~~
- ~~e. Two million dollars (\$2,000,000.00) for damages arising from programming errors or omissions, including copyright infringement, misappropriation of literary property or program format, defamation, or invasion of privacy.~~

~~The insurance policy or policies obtained by the MTN in compliance with this section must be approved and maintained by the city attorney and legal counsel for the company pursuant to the provisions of Article I, section 19(d) through (g).~~

~~(g) *Company support of nonprofit corporation after effective date of 86-Or-164.**~~

- ~~(1) After the effective date of 86-Or-164, city agrees that the company's obligations to support public interest/public service programming shall be governed by the terms contained below and that the terms set forth below shall be in lieu of and supersede the company's former obligation to support public interest/public service programming, as contained in section 8(f)(1) and (2), above, which was to provide one million five hundred thousand dollars (\$1,500,000.00) for capital assets and to provide five (5) per cent of company's gross revenues for an operating appropriation in furtherance of public service and/or public interest programming. Such payments and capital assets to the city under this section, together with five (5) hours weekly of regional local origination programming provided by the company, shall~~

constitute the total responsibility of the company for access and related activities.

- ~~(2) The company shall make available equipment or other capital assets in the aggregate total amount of seven hundred and fifty thousand dollars (\$750,000.00) (excluding sales tax and head-end modulators) to be used in the furtherance of public interest and/or public service programming. No additional capital assets beyond capital assets requested and approved by the city as of June 1, 1986, shall be made available until after January 1, 1988. No more than twenty-five thousand dollars (\$25,000.00) shall be made available in any one year from January 1, 1988 through December 31, 1992. The remaining capital assets, up to the aggregate total set forth above, shall be provided thereafter as replacement assets on a schedule established by the company and the city. Said equipment or other capital assets shall be made available in two (2) equal installments, the first installment to be completed on or before December 31, 1993 and the second installment to be completed on or before December 31, 1994.~~

~~The company shall make available space sufficient to accommodate MTN playback equipment (up to one hundred fifty (150) square feet) in the "head-end room," the studio and adjacent office space at 801 Plymouth Avenue North, Minneapolis, Minnesota, for public interest/public service programming, for the term of the franchise, pursuant to a lease with reasonable terms and conditions* which shall include the following:~~

- ~~1. That the cost for usage of the facilities, pursuant to said lease, shall not exceed the out-of-pocket incremental costs to company, such as security, utilities, insurance and structural alterations, arising out of MTN's, or any successors thereto, use of said facilities.~~
- ~~2. That said facilities shall be made available by company to MTN, or any successor thereto, until the expiration of this franchise, unless the city directs otherwise or the MTN defaults on the lease. The lease shall be assigned to the city in the event MTN defaults.~~
- ~~3. Beginning on January 1, 1987, and each year thereafter, the company shall pay:*~~
 - ~~(i) An annual total pursuant to this chapter of sixty-two thousand, five hundred dollars (\$62,500.00) to the city for public interest and/or public service programming payable semiannually.~~
 - ~~(ii) When the system obtains fifty thousand (50,000) full cable service tier subscribers citywide for three (3) consecutive months, the company shall pay an annual total pursuant to this chapter of eighty-seven thousand five hundred dollars (\$87,500.00) to the city for public interest and/or public service programming semiannually unless the full cable service tier subscriber count declines below fifty thousand (50,000) citywide for three (3) consecutive months. In that event, the payment schedule under subsection (i) above shall govern.~~

~~(iii) In 1991, the company shall pay to the city an annual total pursuant to this section of one hundred six thousand two hundred fifty dollars (\$106,250.00)* for public interest and/or public service programming semiannually. In 1992, the company shall pay to the city an annual total pursuant to this chapter of one hundred and twenty-five thousand dollars (\$125,000.00)* for public interest and/or public service programming semiannually. Said payments shall be made on or before May 15 and November 15 of each calendar year. In each year after 1992 and until the conditions set forth in subsection (iv) below have been met, the company shall increase the amount paid to the city by making an annual cumulative adjustment of one hundred and twenty-five thousand dollars (\$125,000.00) times eighty (80) percent of the consumer price index urban (CPIU) as of December 31 of the previous year or times five (5) percent, whichever is less. In the event the company obtains sufficient subscribers to trigger the provisions of subsection (iv) below, the company shall pay the city the amount specified in subsection (iv) or the cumulative inflation-adjusted amount set forth herein, whichever is greater.~~

~~(iv) When the system obtains ninety thousand (90,000) full cable service tier subscribers citywide for three (3) consecutive months and the company has repaid twenty million dollars (\$20,000,000.00) of its initial principal debt, the company shall pay an annual amount pursuant to this chapter of one hundred seventy-five thousand dollars (\$175,000.00) to the city for public service/public interest programming semiannually unless the full cable service tier subscriber count falls below ninety thousand (90,000) citywide for three (3) consecutive months. In that event, the payment under subsection (iii) above shall govern. The company agrees to pay to the city one percent of gross annual revenues in lieu of any and all funding under this subsection provided that said rate shall apply only when the company has repaid from its operating funds no less than twelve million five hundred thousand dollars (\$12,500,000.00) of its debt.* In the event that the company has not repaid twelve million five hundred thousand dollars (\$12,500,000.00) of its debt from its operating funds, as specified in subsection (iv) above, by the year 2000, the company agrees to provide additional equipment or other capital assets in the amount of fifty thousand dollars (\$50,000.00) during the year ending December 31, 2000, in addition to the programming payment set forth in either subsection (iii) or (iv), whichever applies, and, an additional twenty-five thousand dollars (\$25,000.00) in capital assets each year thereafter. This obligation for additional equipment or other capital assets shall not continue once company has repaid twelve million five hundred thousand dollars (\$12,500,000.00) of its debt from its operating funds, as specified herein, and its annual payment for public interest and/or public service programming becomes one percent of company's annual gross revenue.~~

~~(v) For purposes of this section, the company shall include bulk subscriber equivalents in calculating full cable service tier subscribers. "Bulk subscriber equivalents" shall be calculated for each bulk~~

contract based on the following formula: The full cable service tier monthly rate shall be divided into the per unit monthly bulk contract rate as multiplied by the number of units in the building or buildings subject to the bulk contract. The sum of bulk subscriber equivalents for all such bulk contracts shall be included in the final calculation of "full cable service tier subscribers."

(vi) ~~In accordance with the agreement between the city and the MTN, or any successors thereto, ("MTN city agreement") dated April 1, 1986, including but not limited to Article I, section 1.01(1); Article II, section 2.01(a); Article IV, section 4.02; Article IX, section 9.01, et seq., and Article XI, section 11.07, thereof, the MTN city agreement, and any budgets or agreements relating thereto, shall be amended to conform to this amendatory ordinance and shall be superseded by the terms hereof.~~

(h) ~~MTN carriage.~~ Except as provided in section 8(d) herein, MTN programming shall be carried at the same time and same locations citywide. MTN shall be provided by the company with ninety (90) days' notice prior to any proposed change in channel lineups which would affect MTN channels.

(i) ~~Programming carried by MTN shall be included in the same fashion as other nonpremium programming in any directory of programming (electronic or printed) produced by the company. However, the company reserves the right not to include changes in the proposed MTN programming which are not provided within the schedule for submission established by the publisher of the printed directory or less than seven (7) days before the electronic programming directory is to be produced. The company shall pay for listing of public interest/public service programming on Tier I on the distributed information processing (DIP) guide, or any successor thereto, up to one thousand five hundred dollars (\$1,500.00) annually, provided the MTN supplies the programming schedules on terms and conditions required by DIP guide, or any successor thereto. MTN shall be given space for a monthly guest column in any printed program guide and shall be allowed to purchase advertising at reasonable rates. MTN shall have the right to resell any advertising it purchases.~~

(j) ~~Services for the hearing impaired.~~ The MTN shall provide programming services for the hearing impaired on its channels subject to the provisions of Article III, section 8. These services may include:

(1) ~~The appropriate retransmission of available video services and computer/digital transmissions for the hearing impaired which are transmitted by communications satellite. The company shall make these services available to MTN at the company's cost. The company shall not remove captioning on any programming.~~

(2) ~~The signing and/or captioning of locally produced programming created by, or with the assistance of, MTN shall be the responsibility of MTN.~~

~~The company may use MTN's captioning capability to produce captioned programming. The MTN may use the company's capability, if any, to produce captioned programming.~~

~~(k) *Reservation by city.* Prior to MTN implementation or in the absence of any applicable MTN operating authority or pending city approval of its budget, the city may contract with the company to provide services, equipment, programming, and consultation necessary for the operation of the MTN. Expenditure or commitment by the city of MTN operating and/or capital resources is authorized in furtherance of such operations. The city reserves the right, at its discretion, from time to time, to determine whether the company, pursuant to an agreement, or MTN is performing its purposes in a manner satisfactory to the city, and if it is not, the city, without recourse by the company or MTN, may receive and reallocate all or a portion of the channel capacity, operating appropriation, and capital appropriation, including its facility and equipment purchased previously with such appropriations, to another entity, including the company. However, at no time shall the company's commitment to local programming be less than that described in this section. A new entity shall be required to comply in all respects with the legal responsibilities which MTN has assumed under this section.~~

Section 9. Use of access channels. ~~(a) The company through the MTN or agreement with the city shall, to the extent of the system's available channel capacity, provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first come, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels required in this subdivision. No charges shall be made for channel time or playback time of prerecorded programming on at least one of the specially designated noncommercial public access channels provided for herein; provided, however, that personnel, equipment and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a low-cost means of television access. Where demand for use of the specially designated access channels set out within this subdivision does not warrant activation of all the specially designated access channels required in this subdivision, public, education, governmental, and leased access channel programming may be combined on one or more cable channels. To the extent time is available therefor, access channels may also be used for other broadcast and nonbroadcast services, provided that said services are subject to immediate displacement if there is demand to use the channel for its specially designated purpose. In the event that shared access programming is undertaken, at least one full channel shall be available on the VHF spectrum for shared access programming.~~

~~(b) Whenever the specially designated noncommercial public access channels or the specially designated educational access channel or the specially designated local government access channel, or the specially designated leased access channel required in this section is in use during eighty (80) per cent of the weekdays (Monday through Friday), for eighty (80) per cent of the time during any consecutive three-hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, the company, through MTN or agreement with the city shall have six (6) months in which to provide a new specially designated access channel for the same purpose, provided that provision of such additional channel or channels shall not require~~

~~the company to install converters. However, nothing contained herein shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to this franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.~~

~~(c) The company through MTN or agreement with the city shall establish rules pertaining to the administration of the specially designated noncommercial public access channel, the specially designated educational access channel and the specially designated leased access channel required by this section. The operating rules governing the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use.~~

~~(d) The company through MTN or agreement with the city shall make readily available for public use at least the minimum equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel required by this section. The company through the nonprofit corporation shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery-operated portable equipment. Need within the meaning of this subdivision shall be determined by subscriber petition. The petition must contain the signatures of at least ten (10) per cent of the subscribers of the system, but in no case more than five hundred (500) nor fewer than one hundred (100) signatures.~~

~~(e) MTN shall have reasonable access to technical equipment, such as stereo FM audio signal capability, interactive computer capability, digital special effects generators, computer editing equipment and other technical equipment as it becomes available under the following conditions:~~

- ~~(1) Capacity must be available.~~
- ~~(2) Access to such equipment can be made available without interfering with any proprietary interest of the company, or the privacy interests of the company or its subscribers.~~
- ~~(3) Any MTN personnel utilizing such equipment must be trained and qualified in its use.~~
- ~~(4) The MTN shall compensate the company for the use of such equipment at cost.~~
- ~~(5) The MTN requests for usage of the equipment shall be made in a manner consistent with normal business practices of the company and the timing and/or frequency of MTN demands shall not materially interfere with the business operations of the company.~~

Section 10. Regional Channel 6. ~~VHF Channel 6 shall be designated as the uniform regional channel by the company. Until such time as it becomes operational, it~~

may be utilized by the company as it deems appropriate. Use of time on the regional channel or channels shall be made available without charge.

Section 11. Leased access channels. (a) The company agrees to reserve the following channel capacity initially for lease, on a nondiscriminatory basis, as a minimum:

- (1) ~~Five (5) per cent of the downstream channel capacity of the residential network.~~
- (2) ~~One upstream channel on the residential network.~~
- (3) ~~Twenty (20) per cent each of the downstream and upstream channel capacity of the institutional network.~~

(b) ~~The company shall not utilize its franchise position to prevent leasing of channels by other entities offering nonentertainment services competitive to those offered by the company.~~

(c) ~~All leased channel service revenues at the subscriber level shall be included in gross revenues subject to the franchise fee. Such revenues shall include monthly or per-use fees charged to users of services by lessees, but shall not include direct revenues generated by the sale of specific products offered by these services.~~

Section 12. Universal connection. ~~The city may require that all dwelling units within the city shall be connected physically to the cable system by the company by means of drop cables terminating at each dwelling unit, whether or not the dwelling unit occupants desire to subscribe to cable service. The cost and charges shall be determined by the city at the time such connection is required. The company shall be entitled to recover the incremental cost of providing a universal connection.~~

Section 13. Penalties. (a) ~~If the company fails to perform any material obligation under the franchise, or fails to do so in a timely manner, the city may at its option, and in its sole discretion assess against the company monetary penalties as follows:~~

- (1) ~~For failure to complete system construction in accordance with the construction plan (see Addendum A), unless the city council specifically approves the delay by motion or resolution due to the occurrence of conditions beyond the company's control, the company shall pay such penalties as are set forth in Article II, section 3(c).~~
- (2) ~~For failure to provide data, documents, reports, information or to cooperate with the city during an application process or cable communications system review, the company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation occurs or continues.~~
- (3) ~~For failure to test, analyze and report on the performance of the system following a request pursuant to this franchise, the company shall pay the city fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.~~

- ~~(4) Forty five (45) days following adoption of a resolution of the council determining a failure of the company to comply with operational or maintenance standards, the company shall pay to the city two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.~~
- ~~(5) For initiating or using a procedure or device for procuring information or data from a subscriber's terminal, dwelling or business without the prior valid authorization of the affected subscriber as required by Article I, section 22(c), the company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation occurs or continues.~~
- ~~(6) For selling, providing or otherwise making available to anyone any information about subscribers obtained by monitoring transmission of any type of signal from a subscriber's terminal, dwelling or place of business without the specific written authorization of the subscriber as required by Article I, section 23(c), the company shall pay five thousand dollars (\$5,000.00) for each such violation. In addition, the total amount of funds paid the company for this information shall be forfeited to the city by the company.~~
- ~~(7) For tapping, monitoring or for arranging to tap or monitor any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever without the specific written authorization of the subscriber or pursuant to court order, the company shall pay ten thousand dollars (\$10,000.00) per day for each day, or part thereof, the violation occurs or continues.~~
- ~~(8) For all other material violations, the company shall pay up to two thousand dollars (\$2,000.00) per day, which the company hereby agrees to pay, said assessment to be levied against the letter of credit, hereinabove provided, and collected by city immediately upon said assessment pursuant to the due process procedures of Article III, section 14.~~
- ~~(9) Each violation of each provision shall be considered a separate violation for which a separate penalty can be imposed.~~
- ~~(10) Exclusive of the contractual penalties set out above in this section, a violation of any provision of this ordinance is by Minneapolis Municipal Code deemed to be a misdemeanor.~~
- ~~(11) The rights reserved by the city herein are in addition to all other rights and remedies the city may have under this franchise or any other law, including without limitation, its right to recover from the company such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by city by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from city's right to enforce the provisions of the performance bond provided for in Article I, section 18, and is intended to provide compensation to city for actual damages.~~

~~(b) For violations considered by the city to have materially degraded the quality of service, the city may order and direct the company to issue rebates or reduce its rates and/or charges to subscribers, in an amount solely determined by the city to provide monetary relief substantially equal to the reduced quality of service resulting from the company's failure to perform.~~

~~(c) The city may require the company to cure all defaults and breaches of its obligations hereunder that are reasonably possible to cure before the company is entitled to increase any rate or charge to subscribers regulated by the city hereunder.~~

~~(d) No penalty shall be imposed by the city against the company for any violation of this franchise without the company being afforded due process of law as set forth in Article III, section 14. In the event the company's performance of any of the terms, conditions, obligations, or requirements of this franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided the company has notified the city in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond the company's reasonable control or not reasonably foreseeable shall include, but shall not be limited to acts of God, civil emergencies and labor strikes.~~

~~(e) The company shall be liable and/or responsible solely for claims pertaining to the construction, maintenance, and operation of its area specified in Article I, section 8.~~

~~(f) In no event shall the company be required to violate federal or state law or FCC regulation in furtherance of its obligations pursuant to this franchise.~~

Section 14. Procedure upon alleged violation. ~~(a) Whenever the cable communications officer shall find that the company has violated one or more of the terms, conditions or provisions of this ordinance, including but not limited to Article III, section 13, a written notice shall be sent to the company by registered mail, return receipt requested, informing them of such violation or violations. Such notice shall be entitled "violation notice." The company may remedy violations of subdivisions (1) through (4) and (8) of Article III, section 13, within ten (10) days of tender of the registered letter bearing the violation notice. If the company fails to remedy the violation within ten (10) days after tender of the registered letter, penalties shall be assessed in accordance with the provisions of Article III, section 13. Violation of Article III, section 13, subdivisions (5) through (7) shall not be subject to remedy and shall be assessed from the first day of occurrence.~~

~~(b) Whenever a penalty has been assessed, the company may, within ten (10) days of the tender of written notice as provided for in Article III, section 14(a), notify the cable communications officer by registered mail that there is a dispute as to whether or not a violation has, in fact, occurred. Such notice shall specify with particularity the matters disputed by the company.~~

~~The cable communications officer shall, upon receipt of the company's letter, cause the matter to be referred to the city council for public hearing with at least thirty (30) days' notice. The hearing shall be held within forty five (45) days of receipt of the company's letter by a committee designated by the council to determine if there is~~

~~reason to believe the company has committed a violation of Article III, section 13. The company and the city shall have the right to seek subpoenas where available and to cross-examine witnesses. After public hearing, the council shall determine if there is reason to believe the company has committed a violation of Article III, section 13, and shall make written findings of fact relative to their determination. If violation is found, the company may petition the council for reconsideration of the matter, appeal to the Minnesota Cable Communications Board, or appeal to the courts.~~

~~(c) Upon a determination by the council that there is reason to believe a violation has taken place, and upon expiration of appeal procedures, or in the event the company chooses not to dispute the finding of the cable communications officer, the city finance officer shall immediately make withdrawals against the letter of credit provided for in Article I, section 17, in accordance with the penalties specified for such violations in Article III, section 13, and shall continue to make withdrawals until the company has satisfactorily remedied the term, condition or provision violated.~~

Section 15. Termination/forfeiture. ~~(a) In addition to all other rights and powers of the city, the city may terminate and cancel the franchise and all rights and privileges of the company thereunder in the event that the company:~~

- ~~(1) Substantially breaches any provision of the franchise, or any rule, order, or determination of the city made pursuant thereto, where such violation shall remain uncured for a period of thirty (30) days subsequent to receipt by the company of written notice of said violation, except where such violation is not the fault of the company or is due to excusable neglect.~~
- ~~(2) Attempts to dispose of any substantial portion of the facilities or property of its business without prior city approval, as provided for herein.~~
- ~~(3) Attempts to evade any of the provisions of the franchise or practice any fraud or deceit upon the city.~~
- ~~(4) Substantially violates any applicable federal, state or local law.~~
- ~~(5) Substantially breaches or otherwise fails, refuses or neglects to perform its obligations under the terms and conditions of the franchise in accordance herewith.~~
- ~~(6) Exclusions to the foregoing causes for termination/forfeiture of the franchise shall be when such violation, breach, failure, refusal or neglect is caused by any of the following:~~
 - ~~a. Acts of God; or~~
 - ~~b. Riots; or~~
 - ~~c. Emergencies declared by competent governmental authority; or~~
 - ~~d. Other causes not attributable directly or indirectly to actions of the~~

company; or

e. ~~Other causes which are without fault of the company or which result from circumstances beyond the company's control.~~

~~(b) In the event that the city determines that the company has substantially violated any provision of the franchise, any rule or regulation promulgated pursuant hereto or any applicable federal, state or local law, the city may make a written demand on the company that it remedy such violation and that continued violation may be cause for termination. If the violation, breach, failure, refusal, or neglect is not remedied to the satisfaction of the city within thirty (30) days following such demand, the city shall determine whether or not such violation, breach, failure, refusal or neglect by the company was excusable or inexcusable as provided in this section 15(a)(6).~~

~~(1) A public hearing shall be held and the company shall be provided with an opportunity to be heard upon thirty (30) days' written notice to the company of the time and the place of the hearing provided the causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the notice. Said notice shall affirmatively recite the causes that need be shown by the city to support a revocation, which shall be pursuant to the express requirements as to revocability of franchises contained in the Constitution of the State of Minnesota, the laws and regulations of the United States and the State of Minnesota, the City Charter, and any agreements between the parties.~~

~~(2) If, after notice is given and, at the company's option, a full public proceeding is held, the city determines that such violation, breach, failure, refusal, or neglect by the company was excusable as provided in this section 15(a)(6), the city shall direct the company to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the city may direct.~~

~~(3) If after public notice and hearing it is determined that the company's performance of any of the terms, conditions, obligations, or requirements of this franchise was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided the company has notified the city in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond the company's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor strikes.~~

~~(4) If, after notice is given and, at the company's option, a full public proceeding is held, the city determines that such violation, breach, failure, refusal or neglect was inexcusable as provided in this section 15(a)(6), then the city may declare, by resolution, the franchise or any renewal thereof be terminated and of no further force and effect unless there is compliance within such period as the city council may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for~~

fraud, misrepresentation, or violation of privacy rights contained in Article I, section 22, subdivisions (b), (c), (d) and (e).

~~(5) The issue of forfeiture and termination shall automatically be placed upon the city council agenda at the expiration of the time set by it for compliance. The council then may terminate the franchise forthwith upon finding that the company has failed to achieve compliance or may further extend the period, in its discretion.~~

~~(6) In the event city council terminates the franchise, the company shall have a period of thirty (30) days beginning the day next following the date the council terminates the franchise within which to file an appeal with the Minnesota Cable Communications Board pursuant to Minnesota Statutes, section 238.14. During such thirty-day period and until the board determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof sooner expires.~~

~~(7) If, after notice is given and, at the company's option, a full public proceeding is held and appeal is exhausted, the city declares the franchise or any renewal thereof breached, the parties may pursue their remedies pursuant to the franchise or any other remedy, legal or equitable, including but not limited to any action listed in Article III, section 13 hereof.~~

~~(c) If the franchise or any renewal thereof terminates by reason of the default of the company, the city shall have the option to purchase the cable system at book value, less any amount for any damages incurred by the city in connection with such default. Damages incurred by the city shall not be limited to any payment made by the city authorizing or directing the continued operation of the system.~~

~~(d) In the event that the company dismantles or terminates the cable system or is required by any provision of the franchise to dismantle or terminate the cable system, the company shall, at the city's direction, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the system. Restoration of city property (including, but not limited to, streets) shall be in accordance with the directions and specifications of all affected agencies of the city and all applicable laws. The company at the option and direction of the city shall restore the same at its own expense.~~

~~**Section 16. Foreclosure.** Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system, or upon the termination of any lease covering all or a substantial part of the cable communications system, the company shall notify the city of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this franchise governing the consent of the city council to such change in control of the company shall apply.~~

~~**Section 17. Receivership.** The city council shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or~~

~~trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:~~

- ~~(a) Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and~~
- ~~(b) Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to the company.~~

~~**Section 18. Compliance with state and federal laws.** Notwithstanding any other provisions of this franchise to the contrary, the company and the city shall at all times conform to all required state laws and rules regarding cable communications not later than one year after they became effective, unless otherwise stated, and conform to all federal laws and regulations as they become effective. Provided, however, if any such state or federal law or regulation shall require the company to perform any service, or shall permit the company to perform any service, or shall prohibit the company from performing any service, in conflict with the terms of this franchise or of any law or regulation of the city, then as soon as possible following knowledge thereof, the company shall notify the city attorney of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city or this franchise.~~

~~Notwithstanding anything in this franchise ordinance to the contrary, this ordinance shall be construed to give effect to those provisions which bring this ordinance into compliance with the requirements of federal, state and local law. The company shall undertake to apply for and prosecute in good faith an application for FCC permission to make payments unless ordered not to do so by that agency or other agency having jurisdiction; but in no event shall the company be required to violate any rule, regulation or order of the FCC or any court having jurisdiction or any other federal or state law.~~

~~If any material section of this ordinance, as determined by the city council, is held to be invalid or preempted by federal or state regulations or laws, the city shall negotiate with the company appropriate modifications to the franchise to provide reasonable relief from such invalidity or preemption. If the parties are unable to reach agreement on such modifications, then the dispute will be submitted to a mutually agreeable arbitrator, in accordance with Minnesota law, who will determine what modifications and/or alternative relief is appropriate. The arbitrator's decision shall be binding on the parties, provided, that no decision of the arbitrator shall require any party to be in violation of any federal or state law or regulation.~~

~~**Section 19. Waiver and release of rights.** A. *Waivers associated with the enactment of 86-Or-164.* In consideration for the enactment of 86-Or-164 and in consideration for the agreement contained in Article III, section 8(g) hereof, company forever releases and waives any claims it may have for any overpayments and prepayments made prior to the effective date of 86-Or-164 including the time value of money pursuant to the CCPA, as specified below:~~

- ~~(1) The company waives and releases, now and forevermore, any and all claims against the city for prior payments to and the city's collection of a five (5) per cent franchise fee without authorization from the Federal Communications Commission ("FCC") which was required pursuant to 47 C.F.R. Section 76.31, for claims of overpayments of franchise fees based on the FCC's decision in in re: The City of Miami, Florida (FCC Docket No. CSR-2326, June 28, 1984).~~
- ~~(2) The company waives and releases, now and forevermore, any and all claims against the city for advances of franchise fees pursuant to Article I, section 9(b) and outstanding advances for public interest/public services programming in the total amount of one hundred thousand dollars (\$100,000.00) for Chapters 1 and 2.~~
- ~~(3) The company waives and releases, now and forevermore, any and all claims against the city for overpayments for public interest and/or public service programming pursuant to Article III, section 8(f)(2).~~
- ~~(4) The company waives and releases, now and forevermore, claims that payments made prior to the effective date of 86-Or-164 pursuant to Article I, section 9, and Article III, section 8(f) were in violation of state or federal statutory, constitutional or regulatory requirements, including CCPA.~~
- ~~(5) The city waives and releases company, now and forevermore, from payments to the city deferred under Addendum D and Addendum C adopted pursuant to 85-Or-174 in consideration of the adoption of 86-Or-164.~~

~~B. *Waivers associated with the enactment of 89-Or-013.* In consideration for the enactment of 89-Or-013, execution of the acceptance of 89-Or-013 and guarantee by KBLCOM, KBL and company, and, in consideration for the settlement agreement and release dated February 2, 1989, between city, company, KBL, KBLCOM, Rogers U.S. Cablesystems, Inc. (RUSCI), Rogers Cablesystems of America, Inc. (RCA), RCA Cablesystems Holding Co. (RCACH), Rogers U.S. Holdings Limited (RUSHL), Rogers Cablesystems, Inc., a Canadian Corporation (RCI), it is understood that company, RCI, RUSHL, RCACH, RCA, RUSCI, KBL and KBLCOM and their successors, heirs and assigns, KBL, Cablesystems of America, Inc., KBL U.S. Cablesystems Inc., KBLCMI and KBLCMLP, forever waive, release and discharge the city and MTN, their officers, agents, employees, successors and assigns, from any and all claims, suits, actions, demands, rights, damages, costs and expenses, whatsoever, including all claims for attorneys fees, of any nature arising from or in connection with any payments made or services provided to the city or MTN by company pursuant to Appendix H, Chapter 1 through the "investment date", as defined in a stock purchase agreement dated August 9, 1988 and thereafter amended on December 16, 1988 between KBL and RUSHL or April 30, 1989, whichever is earlier. Said waiver, release and discharge shall include, but not be limited to any claims, suits, actions, damages, rights, demands, costs and expenses, whatsoever, including all claims for attorneys fees through the investment date, or April 30, 1989, whichever is earlier, based on any claimed violation of state or federal constitution, state or federal statutory or regulatory requirements, including the Federal Cable Communications Policy Act of 1984.~~

~~C. Except as set forth herein or as set forth within the acceptance of 89-Or-013 and guarantee, or as set forth in the settlement agreement and release dated February 2, 1989 executed in conjunction therewith, neither company nor city waives or releases any rights they may have.~~

ARTICLE IV. PURCHASE OF CABLE COMMUNICATIONS SYSTEM BY CITY

~~**Section 1. Revocation or expiration of the franchise.** In the event the city exercises its option to purchase the cable system upon franchise revocation, the purchase price to be paid by the city shall be the company's capitalization cost less depreciation. "Capitalization cost" shall mean the monies invested for tangible assets, exclusive of intangible assets such as good will or value of the franchise. If the city purchases the cable system upon expiration of the term of the franchise or any renewal thereof, the purchase price to be paid by the city shall be fair market value.~~

~~**Section 2. Purchase option.** The city has the right to purchase the system at any time eight (8) years after the grant of a certificate of confirmation. The purchase price of the system shall be fair market value and shall be determined by an independent appraiser mutually agreed upon by the city and the company.~~

~~**Section 3. Rights to system after franchise end.** The company concedes that it has no vested right to operate the system nor any claim to system revenues once the franchise has been revoked, terminated, forfeited, or after it has expired except for periods during which the company continues to operate the system pursuant to Article II, section 8 herein.~~

~~**Section 4. Relocation.** In the acceptance of this franchise the company expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.~~

~~**Section 5. Date of valuation.** The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date the city makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.~~

~~**Section 6. Transfer to city.** Upon exercise of either option above and the payment of the above sums by the city and its service of official notice of such action upon the company, the company shall immediately transfer to the city possession and title to all facilities and property, real and personal, of the cable communications system, free from any and all liens and encumbrances not agreed to be assumed by the city in lieu of some portion of the purchase price set forth above; and the company shall execute such warranty deeds or other instruments of conveyance to the city as shall be necessary for this purpose.~~

~~**Section 7. Arbitration of value and costs.** (a) In the event the city and the company cannot agree upon the value of the cable communications system, either may give notice of a demand to the other for arbitration.~~

~~(b) Arbitration shall commence and proceed according to law except as follows:~~

~~(1) The parties shall, within fifteen (15) days, appoint one arbitrator each who is~~

~~experienced and knowledgeable in the valuation of business property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within fifteen (15) days.~~

- ~~(2) Within thirty (30) days after appointment of all arbitrators and upon ten (10) days' written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.~~
- ~~(3) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by the city attorney.~~
- ~~(4) At the close of the hearings and within thirty (30) days, the board of arbitrators shall prepare findings and decision agreed upon by a majority of the board which shall be filed with the city and served by mail upon the company. Unless the parties extend by mutual agreement the time which the board of arbitrators has to make a decision, the proceedings shall become null and void and shall be started anew. If new proceedings are started they shall be based upon the record of the original proceeding. Supplemental evidence may be taken at the request of the new panel of arbitrators in accordance with the procedures outlined in this section.~~
- ~~(5) The decision of the board of arbitrators shall be final and binding upon the parties.~~
- ~~(6) Either party may seek judicial relief in the following circumstances:
 - ~~a. A party fails to select an arbitrator;~~
 - ~~b. The arbitrators fail to select a third arbitrator;~~
 - ~~c. One or more arbitrator is unqualified;~~
 - ~~d. Designated time limits have been exceeded;~~
 - ~~e. The board of arbitrators has not proceeded expeditiously; and~~
 - ~~f. Based upon the record the board of arbitrators abused its discretion.~~~~
- ~~(7) In the event a court of competent jurisdiction determines the board of arbitrators has abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.~~
- ~~(8) Cost of arbitration shall be borne equally unless the board of arbitrators finds the offer of the city or the demand of the company was unreasonable, in which case, cost may be apportioned so that less or none of the costs may~~

~~be borne by one party.~~

ARTICLE V. RENEWAL OF FRANCHISE

Section 1. Renewal. ~~This franchise may be renewed for a period not less than five (5) years, subject to the same terms and conditions as contained herein or on such different or additional terms and conditions as may be lawfully specified by the city.~~

~~(a) Commencing no later than twenty-four (24) months prior to expiration date of the franchise, the city shall undertake an evaluation of the city's franchise ordinance and the services then being offered in the city.~~

~~(b) Except by mutual agreement of the city and the company, no earlier than two (2) years and not less than eighteen (18) months prior to the expiration date of the franchise, the company may submit an application for renewal to the city by registered or certified mail. At that time, after giving public notice pursuant to Article I, section 23, the city shall review the provisions of the franchise and shall evaluate the performance of the company, including but not limited to the results of system performance and system and services review sessions. In making this evaluation the city shall consider relevant factors including, but not limited to, the following:~~

~~(1) Technical development and performance of the company's cable system;~~

~~(2) Programming;~~

~~(3) Additional services offered by the company;~~

~~(4) Cost of service;~~

~~(5) All obligations of company as prescribed by the franchise;~~

~~(6) Cable industry performance nationwide; and~~

~~(7) Comments from residents and representatives of community organizations submitted in a manner to be determined by the city.~~

~~(c) After holding a public hearing, the city shall take such actions as it deems appropriate, which may include any of the following:~~

~~(1) If the city determines the company's performance to be satisfactory, a renewed franchise may be granted pursuant to this ordinance.~~

~~(2) In the event the company is determined by the city to have performed unsatisfactorily, new applications may be sought and evaluated and a franchise awarded in accordance with franchising procedures then in force.~~

~~(3) The city may direct the company to remove and dismantle its cable system at the company's cost.~~

- ~~(4) The city shall have the option to require the sale by the company and the purchase by the new franchisee of the system at its then fair market value. In the event that the city determines that the existing system is to be used by the new franchisee, the city shall direct in the award of the new franchise the sale by the company and the purchase by the new franchisee of the system at its then fair market value. Upon exercising such option, the city shall proceed to obtain an appraisal of the fair market value of the system to be completed within ninety (90) days of the exercise of its option. No later than sixty (60) days after completion of the appraisal the successor company shall pay the company the fair market value of the system and, upon payment, shall be entitled to title and possession of the system. In the event that the company and the successor company cannot agree upon the fair market value of the system, the successor company shall pay the company seventy-five (75) per cent of the appraised fair market value of the system within sixty (60) days after completion of the appraisal and, upon payment, shall be entitled to title and possession of the system. In that event, the ultimate amount payable to the company shall be determined by action in the district court. As used in this subsection, the term "fair market value" shall not include any allocation of value for expectation of renewal of franchise.~~
- ~~(5) Absent a timely request from company to renew the franchise, the franchise shall terminate at the end of its initial or any renewal term.~~
- ~~(6) The city may take such other action as allowed by law which, in its sole discretion, it shall deem appropriate.~~

ADDENDUM A. CABLE COMMUNICATIONS SYSTEM DESIGN, CONSTRUCTION AND SERVICES

~~**Section 1. Commitment by company.** A. *Cable communications system design.* The company shall construct a state-of-the-art cable communications system providing the following features:~~

- ~~1. *System configuration.* The cable television system shall be a dual integrated residential/institutional network of approximately four hundred forty-three (443) miles, consisting of at least two (2) interconnected cables. The company shall install the necessary system hardware to accommodate activated bidirectional communications channel capability in its initial configuration.~~
- ~~2. (a) *Channel capacity.* The cable television system shall be installed to deliver signals at frequencies up to four hundred forty (440) megahertz (MHz), with frequency and channel capability as indicated below. Total band width on two (2) cables is a maximum of eight hundred eighty (880) megahertz.~~

TABLE INSET:

<i>Dual Cable Network</i>	<i>Signal Direction</i>	<i>Activated Signal Frequency Capacity (MHz)</i>	<i>Activated Video Channel Capacity</i>
Integrated residential network	Outbound	800	120 plus FM band
Integrated residential network	Inbound	48	8 video equivalent plus data
Integrated fiber optic institutional network	Outbound	See Alternative Network	
Integrated fiber optic institutional	Inbound	See Alternative Network	
Interconnect	Outbound	156	26 video equivalent
Interconnect	Inbound	102	17 video equivalent

~~(b) Construction and activation of alternative network shall be completed by August 31, 1990. The alternative network shall meet or exceed the design and construction specifications set forth in the company's project plan dated March 12, 1990, as modified by the alternate network design description dated September 21, 1990. The alternative network shall be owned and maintained by the company for the benefit of the city. The alternative network will be controlled and managed by the city.~~

~~i. The city or the company may suggest areas of priority for construction and activation of distribution network reverse amplifier modules on or before October 1, 1989, and the company shall use its best efforts to construct and activate reverse amplifier modules on the distribution network (feeder cable) in accordance with the priorities designated by the city. The city or the company may suggest construction and activation of comparable technologies and design alternatives to a midsplit configuration, provided that any change in design or substitution of comparable technology shall be valid only upon written approval to company from the city's cable officer.~~

~~ii. During the period of construction set forth herein, the construction and activation of the alternative network shall be secured by the bonding requirements provided for in Article I, section 18 of Appendix H, Chapter 1 and Article I, section 17 of Appendix H, Chapter 2, irrespective of the completion by company of any other construction requirements set forth in the franchise ordinances.~~

~~vii. Company shall secure performance of the construction obligations for the alternative network called for in Addendum A, section 1 in a bond issued in conformance with Article I, section 18, hereof, and in conformance with the acceptance of 89-Or-013 and guarantee, so that the total face value of the bond required hereunder and under the franchise is two million one hundred thousand dollars (\$2,100,000.00). At such time as the city's cable officer certifies that the alternative network design construction required under Addendum A, section 1 is completed, the bond shall be reduced to the amount required in the franchise ordinances.~~

~~iv. During the period of deferral of construction and activation of the alternative network, the city may, in addition to any other remedies it may have, either impose any of the penalties set forth in Article II, section 3(c) or Article III, section 13, in accordance with the procedures set forth in Article III, section 14, for any delays in construction, installation, and/or activation of the alternative network.~~

~~3. *Satellite uplink.* The company shall provide or cooperate with Twin Cities Public Television and/or any other entities designated by the city to provide satellite uplink capability within one year after the city determines such an uplink to be in the public interest. The terms and conditions of any agreement arrived at pursuant to this section must be approved by city.~~

~~4. *Satellite earth station.* The company, initially and throughout the term of the franchise, shall reasonably provide a sufficient number of earth stations to receive signals from all operational communications satellites that generally carry programs available to cable systems.~~

~~5. *Capacity for interactive services.* The company shall provide initially the capability to utilize up to fifty (50) channels on each of the two (2) network trunk cables for teletext services, as well as video programming, on a selectable basis. In addition, the system shall have the capacity for interactive residential services, including but not limited to security alarm monitoring, home shopping, energy management, electronic banking, videotext, subscriber polling, video games, meter reading, computer/digital transmissions, and one-way or interactive education. Interactive services not offered initially shall be provided as soon as technically and economically feasible in the future. All customer equipment necessary for such services, such as addressable interactive converters, home terminals and home detectors, shall be provided to subscribers by the company in accordance with established and uniform rate schedules. Projected installation costs for the replacement of existing noninteractive converters shall not be considered in determining economic feasibility.~~

~~6. *Local origination.* The company may provide local origination facilities and staff. The company is strongly encouraged to work cooperatively with the nonprofit corporation and other public and nonprofit agencies which produce programming. The company shall provide local origination facilities and staff to the extent funded by the city.~~

~~7. *Parental control lock.* The company shall provide subscribers, upon request, at no charge, with a parental control locking device or digital code that permits inhibiting the viewing of premium channels.~~

~~8. *Status monitoring.* The company shall provide an automatic status monitoring system as an integral part of both the residential and the institutional cable networks.~~

~~9. *Home subscriber equipment.* The company proposes the following equipment for home subscriber use:~~

~~Tier 1: Universal service tier (12-channel service); no subscriber terminal device proposed.~~

~~Tier 2: Full-cable service tier; 90-channel capacity with options which will include Zenith Z-TAC set-top addressable converter or equivalent equipment.~~

~~10. *Applicable technical standards.* The company shall meet all technical standards pursuant to Article II, section 5 of the franchise ordinance.~~

~~11. *Interactive system design.* The initial interactive system design is capable of providing, but not limited to, security services, opinion polling, alarm monitoring and pay-preview capability. The complete system design includes computer hardware and software, data receivers, home terminal units, converter status transmitters and bridger amplifiers.~~

~~Low-speed polled data used by the security/opinion polling/status monitoring system has been allocated its own band of frequencies (five (5) to twelve (12) MHz) controlled by a separate code-operated switch in each bridger amplifier. Reverse video transmission has been assigned two (2) television channels at the high end of the sublow band (twenty-one (21) to thirty-three (33) MHz).~~

~~The band from twelve (12) or twenty-one (21) MHz has been reserved for future introduction of high-speed data services using a carrier-sense multiple-access transmission protocol. Spare positions have been incorporated in the bridger stations to install new modules which will provide upstream noise and ingress control for the high-speed data channel. The amplifier design includes a failsafe bypass circuit which activates automatically in the event of power failure, amplifier failure or loss of gain. System design also includes a home terminal unit (HTU) for security application as well as the converter status transmitter (CST) for monitoring system performance. Converters with the CST option will enable subscribers to order pay-per-event programming directly through the cable system. Interfaces between the interactive system computer, billing system computer and addressing computer for Zenith Z-TAC converters make the system completely automatic.~~

~~12. *Interactive system operation.* The data collection system uses time, frequency and spatial multiplexion. The computer has the capability of scanning through the cable system, receiving data from home terminal units in bridger distribution groups of up to five hundred (500) homes. The following units are employed in the scanning process:~~

~~a. *Minicomputers.* Two (2) minicomputers operating in a parallel processing mode control the data collection system. Major functions include scanning control, received data verification and analysis, memory management, alarm transmission and system status monitoring.~~

~~b. *Multichannel receivers.* The multichannel receivers receive and demodulate data from all home transmitter and status monitor carriers in operation on the system. The received data and/or missing carrier code is transferred to the minicomputers under program control.~~

- c. ~~Trunk switch; Cablesystems Engineering model No. TRS-8.~~ The trunk switch connects the code-operated switch addressor and the multichannel receiver to any of the trunks radiating from the hub. The trunk switch operates under computer control.
 - d. ~~Code-operated switch addressor; Cablesystems Engineering model No. COSA-8.~~ The code-operated switch addressor receives address and command data from the computer and modulates an RF carrier with the information using the frequency shift keying technique.
 - e. ~~Trunk bridger station code-operated switch.~~ Each bridger station is equipped with two (2) code-operated switches, one controlling the band from five (5) to twelve (12) MHz (data) and the second controlling the band from twenty-one (21) to thirty-three (33) MHz (video). The switches are operated independently by an addressable receiver which demodulates information from the FSK modulated RF signal originated by the COS addressor. A maximum of five hundred (500) subscribers are included in each distribution area fed from a bridger amplifier.
 - f. ~~Home terminal unit.~~ The home terminal unit (HTU) interfaces with sensor devices. The unit is standby-powered and transmits continuously on one of five hundred (500) discrete frequencies in the band from five (5) to twelve (12) MHz. The data rate is approximately two (2) kilobits per second.
 - g. ~~Status transmitter.~~ The status transmitter is located in bridger amplifiers and is interfaced with the power supply, amplifier bypass controls, etc. The transmitter is injected on the distribution side of the COS to permit positive confirmation of switch closure.
13. ~~Computer processing.~~ The computer program compares the data received from each HTU, CST or status monitor with the data received on the previous scan. Any changes are detected and passed on for further processing.
- Each HTU, CST and status monitor has a unique identity which can be determined by the setting of the trunk switch, COS address and received frequency of the data carrier. Matching the terminal identity with the received data permits the system to look up stored information which can relate the received data to its meaning.
14. ~~Institutional network.~~ The routing of the integrated Institutional Network is contained on the maps in section B(2). The capacity and other system design features are described in Addendum A. The company shall build all areas previously passed by the separate institutional network as a part of the integrated residential/institutional network. The integrated network will also pass through downtown Minneapolis and be available to users.

B. ~~System construction.~~

1. ~~The construction schedule required pursuant to Article II, Section 3, is as~~

follows:

TABLE INSET:

<i>Zone Completion Dates</i>	
<i>Date* Scheduled (months)</i>	<i>Area Number</i>
12	I
18	II
24	III
30	IV
36	V

* Number of months from commencement date to completion as defined in Article II, section 3, for zones established herein.

2. ~~Cable communications systems maps. The accompanying maps indicate the proposed routes of the integrated residential/institutional networks of the Minneapolis Cable Communications System which shall initially be served by the system design set forth in Addendum A, Section 1A.~~

~~GRAPHIC LINK: [Click here](#)~~

~~GRAPHIC LINK: [Click here](#)~~

~~C. Cable communications system services.~~

1. ~~Residential network services. The company shall provide the following services on the residential network:~~
 - a. ~~Initial services and programming. Unless otherwise specified the company shall provide, as a minimum, the initial services and programming listed in this section. The company shall not reduce the number of program services without prior written notification to and approval by the city and/or the cable communication officer. The city's approval shall not be unreasonably withheld and its written decision shall be given to the city within thirty (30) days from receipt of this notification. The company may add new services at any time. Any new rates or rate increases necessitated by the added services are subject to the city's approval, where applicable. The company may combine programming into composite channels to improve efficiency of channel utilization or to attract a larger viewing audience. When a distributor of any program or service substantially alters the terms or conditions upon which the program or service is offered, the company reserves the right to substitute similar programming or services or to offer other alternatives on reasonable terms or conditions comparable to the programming or services originally offered, subject to the approval required herein. Such approval shall not be unreasonably withheld.~~

~~b. Subscriber television services. The company shall provide subscriber television services as follows:~~

TABLE INSET:

		<i>Channel Capacity</i>
I.	Universal service tier	12
II.	Full cable service tier**	90*
* Text option available as additional pay service.		
**Four (4) FAA-restricted channels are now not available and shall be provided upon FAA/FCC approval.		

~~c. Subscriber television services description. The company shall provide, at minimum, the following programming for subscriber television services:~~

~~(1) Twelve-channel universal service.~~

~~Seven (7) broadcast channels and five (5) MTN channels (which includes regional Channel 6)*~~

~~*To the extent must-carries increase, must-carries will have priority over MTN channels consistent with the Laws of Minnesota and FCC rules.~~

~~(2) Ninety-channel full cable service tier.~~

~~(a) Carriage of seven (7) local area broadcast television stations.~~

~~(b) Full carriage of three (3) distant broadcast television stations:~~

~~WGN Chicago~~

~~WTBS Atlanta~~

~~CFMT Toronto*~~

~~* Pending availability~~

~~(c) Carriage of the following video programming services distributed by communications satellite or equivalent programming of the same general class to the extent it is available:~~

~~1. American Education Television Network (AETN)~~

~~2. Appalachian Community Service Network (ACSN)~~

~~3. Black Entertainment Television (BET)~~

4. ~~Black Music Television*~~
5. ~~Lifetime~~
6. ~~WCCO news channel~~
7. ~~Cable News Network II (CNNII)~~
8. ~~Cable-Satellite Public Affairs Network (C-SPAN)~~
9. ~~Christian Broadcasting Network (CBN)~~
10. ~~Cinemerica*~~
11. ~~ESPN II*~~
12. ~~Eternal Word Television Network~~
13. ~~Good Stuff*~~
14. ~~Kid Vid Network*~~
15. ~~Home Music Store*~~
16. ~~Modern Satellite Network (MSN)~~
17. ~~Nashville Network*~~
18. ~~National Christian Network (NCN)~~
19. ~~National Entertainment Television*~~
20. ~~National Jewish Television (NJT)~~
21. ~~National Spanish Television Network (NSN)~~
22. ~~Nickelodeon~~
23. ~~Opryland Music Network*~~
24. ~~People That Love Network (PTL)~~
25. ~~The Preview Network~~
26. ~~Satellite Program Network (SPN)~~
27. ~~Satellite News Channel I (SNC)~~

~~28. SNC II~~

~~29. Telefrance~~

~~30. Trinity Broadcasting Network~~

~~31. US Senate*~~

~~32. USA Cable Network (includes Calliope, The English Channel and other programs)~~

~~33. UTV Involvision*~~

~~34. WCCO weather channel~~

~~* Pending availability~~

~~(d) Carriage of combined video/text services.~~

~~(e) Carriage of the following imported automated programming services or equivalent programming of the same general class to the extent it is available:~~

~~1. AP Newscable~~

~~2. AP Washington Report~~

~~3. BIZ NET*~~

~~4. Financial News Network~~

~~5. Reuters Financial/Sports~~

~~* Pending availability~~

~~(f) Carriage of five (5) local automated programming services:~~

~~1. Community Bulletin Board~~

~~2. Cable Guide~~

~~3. Airport Arrival and Departure*~~

~~4. Community Classifieds~~

~~5. Shopping Basket~~

~~* Pending availability~~

~~(g) Carriage of the following optional pay television services or equivalent programming of the same general class to the extent it is available.~~

1. Cinemax
2. Galavision
3. Home Box Office
4. Home Theatre Network
5. The Movie Channel
6. Brave
7. Showtime
8. The Disney Channel
9. Spotlight
10. Public Subscriber Network*
11. Playcable*
12. Pay Per View

Additionally, the company will provide the following on the full cable service tier:

1. Entertainment and Sports Programming Network
2. MTV: Music Television
3. Arts and Entertainment Network
4. Cable News Network (CNN)

In providing interactive service, the company will offer the following optional interactive services by such time as construction of the cable communications system has been completed and/or pending availability:

(a) Security Services. The company interactive system is proposed for security service. The technology is described in Section I, Part A of this addendum.

(b) Reuters IDR Information Retrieval. The Reuters Company has developed a full field teletext system to transmit data using satellite and cable television systems. The Reuters IDR signal is handled in the same manner as a conventional video transmission and uses one standard six (6) MHZ channel. Each subscriber to the service is

supplied with a Reuters terminal which receives the IDR signal and converts it to text format on the attached video monitor.

(c) Dow Jones News Retrieval. Dow Jones is currently using TOCOM equipment for this service although other systems have been discussed. Subscribers are supplied with a TOCOM terminal which exchanges data with the subscriber's microcomputer or dumb terminal over an RS-232 interface.

(d) The Source. The Source is planned to be a teletext transmission in the vertical blanking interval of regular video channels. The SSAVI video encoder has the capability of inserting data into the vertical blanking interval which can be retrieved and decoded using suitably equipped Z-TAC converters.

(e) Pay-per-view programming. Pay-per-view programming will be delivered using the Zenith Z-TAC addressable converter system.

(f) Opinion polling. The company interactive system is proposed for opinion polling. The technology is described in Section A.

(g) Interactive text. Interactive text is planned to be a telecast transmission in the vertical blanking interval of regular video channels. The SSAVI video encoder has the capability of inserting data into the vertical blanking interval which can be received and decoded using suitably equipped Z-TAC converters.

(h) Home banking and home shopping. The technical system adopted for these services would be selected in cooperation with the home banking and home shopping participants.

(i) Time-Shared Telidon. Time-Shared Telidon is provided with a microcomputer database system developed by the company. Access is provided through the interactive converter keypad or touch tone telephone. Data is transmitted to Telidon decoders at the head end to convert the data into a conventional video image which is modulated and transmitted to the subscriber's converter. The term "Telidon" refers to the North American Presentation Level Protocol Syntax (ANSI X3L2.1 Videotex/Teletext Character Sets).

(j) Newspaper services. The technology selected for newspaper services will be determined in consultation with the participating newspapers.

d. ~~Subscriber FM service.~~ The company shall provide subscriber FM service including the following:

(1) ~~Local radio stations.~~

(a) ~~KQRS~~

~~(b) KMOJ~~

~~(c) WAYL~~

~~(d) KSTP~~

~~(e) KNOF~~

~~(f) KBEN~~

~~(g) KSJN~~

~~(h) KTCR~~

~~(i) KTIS~~

~~(j) WLOL~~

~~(k) WCTS~~

~~(l) KDWB~~

~~(m) KEEY~~

~~(n) WCCO~~

~~(o) KFMX~~

~~(p) KFAI~~

~~(q) KTWN~~

~~(r) KUOM~~

~~(s) KBEM~~

~~(t) WMMR~~

~~(2) Other audio services:~~

~~(a) WFMT (Chicago)~~

~~(b) JISAL~~

~~(c) Shortage Composite--Services International*~~

~~(d) Reading Services for the Blind~~

~~(e) Seeburg/Lifestyle~~

~~(f) NCN Family Radio Network~~

~~(g) Stereo simulcast services in conjunction with satellite video programming services such as "MTV: Music Television," "CBS Cable" and others as available.~~

~~*Pending approval~~

~~e. *Availability of programming services.* In the event that any programming service as described in this commitment by company is or becomes unavailable to the company, the company may substitute equivalent programming of the same general class to the extent it is available.~~

~~f. *Leased access services.*~~

~~(1) The company shall provide channels for leased access use, in accordance with the rules of the Minnesota Cable Communications Board and the Minneapolis Cable Communications Franchise Ordinance on the residential network of the cable communications system.~~

~~(2) The company shall provide channels for leased access use on the institutional network of the cable communications system in accordance with the Minneapolis Cable Communications Franchise Ordinance.~~

~~(3) The company shall establish operating rules for leased access channels as provided for in the rules of the Minnesota Cable Communications Board. These rules shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use as required.~~

~~g. *Institutional network services.* The company shall offer all economically feasible video, data and/or voice communications services within the technical capacity of the cable system to institutional subscribers by such time as construction of the cable system is complete.~~

Section 2. Channels dedicated for public usage. The company shall dedicate channels for public use to be administered by a nonprofit corporation designated by the City of Minneapolis as specified in Article III of the Cable Communications Franchise Ordinance.

~~A. *Availability of access channels.* In accordance with the rules of the Minnesota Cable Communications Board and with the City of Minneapolis Cable Communications Franchise Ordinance, the company, through the city-designated nonprofit corporation, shall provide all access channels as required by law. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels.~~

~~B. Administration of access channels. The company, through the nonprofit corporation and in accordance with the rules of the Minneapolis Cable Communications Board and City of Minneapolis Cable Communications Franchise Ordinance, shall establish operating rules governing the specially designated noncommercial public access channel, the specially designated educational access channel and the specially designated leased access channel which shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use. All such rules shall comply with applicable federal, state and local regulations.~~

~~ADDENDUM B. MINNEAPOLIS CABLE COMMUNICATIONS RATE ORDINANCE~~

~~Article I. General Provisions~~

~~**Section 1. Title of ordinance.** This ordinance shall be known and may be cited as the "Minneapolis Cable Communications Rate Ordinance."~~

~~**Section 2. Definitions.** Words not defined herein shall be defined in accordance with the provisions of Article I, section 2, of the "Minneapolis Cable Communications Franchise" ordinance.~~

~~*Apartment* shall mean any building with two (2) or more residential units.~~

~~*Residential unit* shall mean any single-family dwelling, apartment unit or apartment building recreation or common area.~~

~~*Standard installation* shall mean, unless otherwise specifically provided, an aerial drop of no more than one hundred fifty (150) feet. An underground drop of no more than one hundred fifty (150) feet shall be a standard installation only in the event that all utilities are underground.~~

~~**Section 3. Regulation of rates; effective date.** No charge shall be made or imposed by the company for any cable communications service subject to regulation by the city, except in accordance with the provisions of this ordinance and the provisions of the "Minneapolis Cable Communications Franchise Ordinance."~~

~~This ordinance shall be in effect, after passage and publication, as of the commencement date of the "Minneapolis Cable Communications Franchise Ordinance;" and, shall remain in effect until amended or superseded in accordance with the provisions set out in the "Minneapolis Cable Communications Franchise Ordinance."~~

~~**Section 4. Captions.** Section captions or headings are intended solely to facilitate reading and reference to the provisions of this franchise ordinance and shall not affect the meaning or interpretation of any provision.~~

~~**Section 4.5. Compliance with state and federal law.** Notwithstanding any provision of this ordinance to the contrary, the city will exercise its regulatory authority over company's rates in a manner consistent with federal or state statute and regulation. This section shall apply when a federal or state statute or regulation preempts the authority of the city to regulate in accordance with this ordinance.~~

~~**Section 5. Rights of city reserved.** Irrespective of the regulation or lack thereof of any service offered now or in the future by the company and regardless of whether or not a service is designated as basic or premium/pay, the city reserves the right to regulate any service when such regulation is not specifically prohibited or preempted by federal or state law.~~

~~**Section 6. Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.~~

~~*Article II. Franchise Fee*~~

~~The company shall pay, as compensation to the city, a franchise fee of five (5) per cent of its gross revenues.~~

~~*Article III. Basic Installation Services*~~

~~**Section 1. Initial rates and charges.** Grantee's initial rates and charges shall not exceed those listed in this section.~~

~~**Section 2. Residential installation.** The initial rates and charges for installation to residential subscribers shall not exceed the following:~~

	<i>Installation Charge</i>
(a) <i>Universal service tier (12-channel service):</i>	
First TV outlet, standard television receiver	\$14.95
First TV outlet, cable-ready television receiver*	15.95
Additional TV outlets, each	N/A
Relocation	10.00
Reconnection	10.00
Change of status	10.00

~~* Capable of receiving unscrambled cable television channels without converter~~

~~(b) *Full cable service tier (90-channel capacity service):*~~

First TV outlet	\$29.95
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Converter (no deposit charge)	no charge (1)
Relocation	10.00
Reconnection	10.00
Change of status	10.00

~~(c) Premium/pay: The initial rates for installation of premium/pay services shall not exceed the following:~~

Home Theater Network Plus	\$10.00
The Movie Channel	10.00
Home Box Office	10.00
Cinemax	10.00
Showtime	10.00
Play Cable	to be determined
Public Subscriber Network	10.00
Galavision	10.00
Brave	10.00
The Entertainment Channel	10.00
The Disney Channel	10.00
Spotlight	10.00
Text	to be determined
Parental security control lockout (parental control device)	no charge
Reuters Instant Data Retrieval according to level of service chosen	varies

~~(d) FM service installation:~~

~~As part of initial service~~ no charge

~~As separate installation~~ \$ 9.95

~~(e) Home security service: Basic home security service shall include (i) one smoke detector or one alert button and (ii) two (2) door contacts. One visual signaling device will be provided for the hearing impaired upon written request prior to installation.~~

~~(f) Upgrade service: From universal service to higher service (unless home security or premium/pay service is ordered, in which case the charge shall be [as] specified above)~~ \$10.00

~~(g) Waiver of installation fees:~~

~~(1) When service first offered: All installations of first outlets except universal service are free within thirty (30) days after service is first available to each home.~~

~~(2) For promotional activities: The company reserves the right to waive or reduce installation fees during initial construction periods and special promotions on a nondiscriminatory basis.~~

~~(h) Multiple services installed at same time:~~

~~(1) All pay installation charges other than Play Cable, Routers, Text options, and other similar services will be waived if one or all pay services are installed at the time of the initial service installation.~~

~~(2) The company reserves the right to charge a ten-dollar (\$10.00) reconnection, relocation, or change of status charge after first installation.~~

~~(i) Reconnection of service: The company shall restore service to customers wishing restoration of service, provided customers shall first satisfy any previous obligations owed. A maximum reconnection fee of ten dollars (\$10.00) may be charged the customer. If the customer's service has been disconnected during the preceding six (6) months for failure to satisfy obligations owed, the company may require the maintenance of two (2) months' advanced payment as a condition precedent to restoration of service.~~

~~(j) Drops: Aerial drops, or underground drops when required pursuant to section 2, in excess of one hundred fifty (150) feet shall cost the same as standard installation, plus the company's cost for that portion of the drop in excess of one hundred fifty (150) feet. The company may request advance payment for such installation.~~

~~(k) *Underground drops:* Underground residential drops shall be charged at the company's cost minus cost of standard installation. The company may request advance payment for such installation. An underground drop of no more than one hundred fifty (150) feet shall be a standard installation only in the event that all utilities are underground.~~

~~(l) *Equipment security deposit option and recovery costs:*~~

~~(1) The company reserves the right to charge a deposit subject to Minnesota Statutes 325E.02 of up to twenty-five dollars (\$25.00) for each addressable converter or a deposit of up to fifteen dollars (\$15.00) for each other converter. The company reserves the right, upon notice to the city, to institute reasonable deposits of not more than twenty-five (25) per cent of the cost of such equipment for any other equipment placed in subscribers' homes, if the company experiences excessive damage to or loss of such equipment.~~

~~(2) The company reserves the right to charge full replacement, repair, and administrative costs for converters or other company-owned equipment which is lost, stolen, or damaged through neglect or misuse by the customer.~~

~~(m) *Standard converter and options:* The company shall provide set-top converters and reserves the right to offer enhanced converter and related equipment options at an additional charge.~~

~~Section 3. Installation to governmental, educational or nonprofit institutions.~~

~~(a) A single standard installation of residential service cable shall be made upon request without charge at each governmental, nonprofit, and educational institution. Installation charges shall be at an amount equal to the company's internal cost to the extent they exceed a standard installation, except as provided for in (f) below. Additional outlets at each institution will be installed at an amount equal to company's internal cost.~~

~~(b) A single standard installation of institutional network shall be made upon request without charge to each governmental, educational and nonprofit institution. Installation charges shall be at an amount equal to the company's internal cost to the extent they exceed a standard installation except as provided in (f) below. Additional outlets at each institution will be installed at an amount equal to the company's internal cost.~~

~~(c) Interior cabling, outlets and exterior distribution within a complex of buildings in a geographical area shall be provided upon request at the company's cost.~~

~~(d) Should the school district or the city desire to provide its own exterior/interior distribution, the company shall render technical assistance without charge. Such installations are subject to inspection and approval by the company.~~

~~(e) Underground installations shall be at the company's cost, less the company's rate for a standard installation, except as provided for in (f) below.~~

~~(f) The company shall extend feeder cable to a property line and a drop (not limited~~

by the definition of "standard installation") to the closest point of the building for each of the following public buildings with technically compatible internal distribution networks approved by the city's cable officer on a schedule established by the company and the city, but said construction shall be completed no later than August 31, 1988:

Minneapolis City Hall
Hennepin County Government Center
Central Library
Auditorium and Convention Center
Civil Service/Public Health Building
MCDA building
Summit Bank building (park board)
Three (3) Downtown Fire Stations
Minneapolis Community College
Minneapolis Technical Institute
Hennepin County Medical Center.

Section 4. Prewiring projects. The owner or builder of a residential or commercial building or other project shall have the right to prewire an entire project for cable service.

A "project" for the purpose of this section shall be any new construction which at the time of prewiring is not past the normal stage of electrical wiring.

(a) *Owner or builder prewiring.* The company shall provide a standard installation to a prewired project at the standard installation rate if the owner or builder complies with the following procedure:

(1) Owner or builder uses methods and materials approved in advance or supplied by the company. The company shall supply specifications and materials at its cost upon request.

(2) Owner or builder requests inspection and approval according to a schedule supplied by the company. The company shall inspect and provide technical assistance at its cost upon request.

(b) *Company prewiring.* The company shall provide a standard installation to a prewired project at the standard installation rate if the company has prewired the project. All charges for prewiring and rewiring of multiple-unit facilities will be accomplished on an actual cost of installation basis by the company. Request for prewiring shall be sufficiently in advance for the company to arrange for prewiring except in no event shall such advance notice be required to exceed forty-five (45) days prior to commencement.

(c) *Aerial and underground drops.* Any aerial installation in excess of one hundred fifty (150) feet to a prewired project shall be charged according to Article III, section 2(1) and any underground installation shall be charged according to Article III, section 2(m).

(d) *Individual subscribers within project.* Nothing herein shall prevent the company from charging a connection fee in a prewired building of up to fifteen dollars

~~(\$15.00) to individual subscribers within the project at the time they request service.~~

~~Article IV. Monthly Subscriber Service Rates~~

~~**Section 1. Standard monthly service rates.** Except as otherwise specifically provided for, the initial monthly rates and charges for service to commercial establishments or institutions, single-family dwellings, single apartment units, single condominium units, apartment building recreation areas or condominium common areas shall not exceed the following:~~

	<i>Monthly Rate</i>
(a) Universal service tier (12-channel capacity service):	
Standard television receiver, first TV outlet	\$1.95
Additional TV outlets, each	N/A (not available)
Converter (no deposit charge)	(f)
(b) Full cable service tier (90-channel capacity service):	
First TV outlet	\$11.95
Additional TV outlets, each	11.95
Converter (no deposit charge)	no charge
(c) Premium/pay monthly service: The initial monthly rates and channels for premium/pay services shall not exceed the following except in accordance with Article I, Section 14:	
Home Theater Network	
The Movie Channel	
Home Box Office	
Cinemax	
Showtime	
Play Cable	

~~Public Subscriber Network~~

~~Galavision~~

~~Brave~~

~~The Entertainment Channel~~

~~The Disney Channel~~

~~Spotlight~~

~~Text~~

~~Reuters Instant Data Retrieval~~

~~The company reserves the right to set or change monthly rates for premium/pay services herein at its discretion.~~

~~(d) FM service monthly rate (per outlet) 1.50~~

~~(e) Home security service, monthly rates:~~

~~Monitoring 9.95~~

~~Terminal/maintenance 6.00~~

~~Total— \$15.95~~

~~(f) On universal service tier, a converter may be necessary to ensure interference-free reception of over-the-air broadcast channels on some television sets.~~

~~(g) There is no monthly charge for duplicate pay service provided to additional outlets, excluding interactive pay services. The company reserves the right to initiate such charges if the company is required to reimburse pay programming suppliers for service to additional outlets.~~

~~(h) The company reserves the right to offer monthly rate discounts upon the purchase of two (2) or more premium/pay services.~~

~~(i) Equipment security deposit option and recovery costs:~~

~~(1) The company reserves the right to charge a deposit subject to Minnesota Statutes 325E.02 of up to twenty-five dollars (\$25.00) for each addressable converter or a deposit of up to fifteen dollars (\$15.00) for each other converter. The company reserves the right, upon notice to the city, to institute reasonable deposits of not more than twenty-five (25) per cent of the cost of such equipment for any other equipment placed in subscribers' homes, if the~~

~~company experiences excessive damage to or loss of such equipment.~~

~~(2) The company reserves the right to charge full replacement, repair, and administrative costs for converters or other company-owned equipment which is lost, stolen or damaged through neglect or misuse by the customer.~~

~~(j) *Standard converter and options:* The company shall provide set-top converters and reserves the right to offer enhanced converter and related equipment options at an additional charge.~~

~~(k) *Pay-per-view:* In charging for pay-per-view program or service offerings, the company may initiate and vary its charge according to the particular program or service offered.~~

~~**Section 2. Standard monthly service rates for governmental, educational or nonprofit institutions.** Where installation of residential cable is made without charge to governmental and educational institutions, there shall be no monthly charge for one outlet of full cable service tier on the residential cable, including set-top converter if necessary. The company may charge for all services to individual units within a building, including but not limited to, individual student housing units (i.e., dormitory rooms), hospital rooms, etc.~~

~~**Section 3. Apartment and commercial facilities.** The initial rates and charges to apartments and commercial organizations for basic cable service up to the "basic service tier" shall not exceed the following:~~

TABLE INSET:

<i>Apartments-- Individual Rate</i>	<i>Standard Installation Charge</i>	<i>Monthly Rate</i>
First outlet	Same as residential rates	Same as residential rates
Reconnection and change of status	Same as residential rates	Same as residential rates
<i>Commercial</i>		
First outlet	Initial outlet--Same as residential rates	Initial outlet--Same as residential rates

~~**Section 4. Bulk monthly rates.** A reduction of the monthly basic cable service charge will be offered by the company for condominiums, apartments, nursing homes, hospitals, hotels, motels, and other commercial units of ten (10) units or more. It will be negotiated based on the number of units available and participating. At no time will a multiple-unit monthly service charge exceed the maximum monthly charge for a single-family residence.~~

~~**Section 5. Standard monthly service rates for profit and commercial enterprises.** The company may charge maximum monthly service rates pursuant to Article IV, section 1, for residential cable service to profit and commercial enterprises.~~

The company charges for use of the institutional and commercial communications network by profit and commercial enterprises will be dependent on the extent and requirements of use. Nonstandard installation shall be available upon request at an amount equal to the company's internal cost plus reasonable overhead.

~~**Section 6. Service calls.** Service requests for maintenance or repair of cable facilities are performed at no charge unless such maintenance or repair is required as a result of damage caused by a subscriber. The company may charge a maximum of ten dollars (\$10.00) for service calls to subscribers' homes where the problem is obviously not the result of a cable failure.~~

~~*Article V. Studio and Equipment Usage*~~

~~**Section 1. Studio and equipment usage.** The company shall not exceed the following initial rates for access studio and video equipment use:~~

	Rates
<i>(a) Noncommercial users</i>	
Studio production time	no charge
Remote production time	no charge
Supervision and instruction	no charge
System playback costs	no charge
Editing costs	no charge
<i>(b) Commercial users</i>	
Studio production time	negotiated
Remote production time	negotiated
Supervision and instruction	negotiated
System playback costs	negotiated
Editing costs	negotiated

~~*Article VI. Maintenance of Initial Rates*~~

~~**Section 1. [No increase permitted initially for other than optional pay services.]** The company shall not increase the initial rates for Tier I programming, other than the optional pay services or full cable service tier programming before December 31, 1988. Upon the expiration of said period, those rates and charges for those services for which rate regulation is not preempted by federal or state agencies shall be subject to~~

regulation by the city.

ADDENDUM C. ~~CABLE COMMUNICATION ORDINANCE~~

~~Article I. Cable Communication Service~~

~~Section 1. Statement of legislative findings, intent and purpose.~~ The council finds that the orderly regulation of cable communications within the City of Minneapolis will help ensure the most effective distribution of quality cable communication service at acceptable rates to the subscribers and reasonable return to the system operators. The council further finds that it is in the substantial interest of public health, safety and general welfare to provide reliable television programs to every person within the city.

It is the purpose and intent of this article to ensure, insofar as possible, the broadest selection of cable communication programming, including the vital community services of news, weather, emergency, government and multilingual broadcasts. Further, it is the purpose and intent of this article to improve the quality of home education, service and entertainment by providing business, religion, sports and other public service programming, as well as pay television.

~~Section 2. Franchise requirement.~~ No person shall operate or participate in the operation of a cable communication system within the City of Minneapolis without first obtaining a franchise issued by the City of Minneapolis. A cable communication system for the purposes of this section shall not include a system that serves only subscribers in one or more multiple-unit dwellings under common ownership, control or management which does not use city rights-of-way.

~~Section 3. Interference with cable service prohibited.~~ Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation or maintenance from a cable communication company regulated by and lawfully operating under a valid and existing cable communication franchise issued by the City of Minneapolis.

~~Section 4. Gratuities and payments to permit service prohibited.~~ Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service.

~~Section 5. Penalties and charges to tenants for service prohibited.~~ Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a franchisee operating under a valid and existing cable communication franchise issued by the City of Minneapolis.

~~Section 6. Reselling service prohibited.~~ No person shall resell, without the expressed, written consent of both the company and the city, any cable service, program

or signal transmitted by a cable communication company operating under a franchise issued by the City of Minneapolis.

Section 7. Protection of property permitted. Nothing in this article shall prohibit a person from requiring that cable communication system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons and property.

Section 8. Risks assumed by franchisee. Nothing in this article shall prohibit a person from requiring a cable communication company to agree to indemnify the owner, or his agents or representatives, for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable communication facilities.

Section 9. [Severability.] If any section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 10. [Effective date.] This ordinance shall take effect and be in force after its passage and publication.

ADDENDUM D. RESERVED*

CHAPTER 2. KBL CABLESYSTEMS OF MINNEAPOLIS LIMITED PARTNERSHIP, A MINNESOTA LIMITED PARTNERSHIP, WITH KBL CABLESYSTEMS OF MINNEAPOLIS, INC., A MINNESOTA CORPORATION, AS ITS CONTROLLING GENERAL PARTNER D/B/A PARAGON CABLE*

ARTICLE I. GRANT OF FRANCHISE AND GENERAL PROVISIONS

Section 1. Title of ordinance. This ordinance shall be known and may be cited as the "Minneapolis Cable Communications Franchise for KBL Cablesystems of Minneapolis Limited Partnership, a Minnesota Limited Partnership, with KBL Cablesystems of Minneapolis, Inc., a Minnesota Corporation, as its Controlling General Partner D/B/A Paragon Cable," and it shall become a part of the ordinances of the city.

Section 2. Definitions. For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning, unless it can be reasonably inferred that a meaning particular to the cable communications industry should be utilized, in which case meanings or definitions used by the FCC shall apply.

(a) *Alternative network* shall mean the fiber optic institutional network set forth in the company's project plan dated March 12, 1990, as modified by the alternative

~~network design description dated September 21, 1990 (Petition No. 253445).~~

- ~~(b) *Apartment* shall mean any building with two (2) or more residential units.~~
- ~~(c) *Basic service* shall mean all subscriber services subject to the regulation by the city.~~
- ~~(d) *Cable communications system or CATV system* shall mean a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals located in the city.~~
- ~~(e) *City* is the City of Minneapolis, a municipal corporation, in the State of Minnesota.~~
- ~~(f) *Class IV channel* means a signaling path provided by the cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.~~
- ~~(g) *Commencement date* shall mean December 1, 1982.~~
- ~~(h) *Company* is KBL Cablesystems of Minneapolis Limited Partnership, a Minnesota limited partnership ("KBLCMLP") with Time Warner Cable Inc. as its controlling general partner, the grantee of rights under this ordinance awarding a franchise, or company's legal successor, transferee, or assignee. Company is doing business as Time Warner Cable ("TWC").~~

~~Company, as defined herein, is a successor in interest to the rights held by those legal entities designated as "Company" in the previous enactments of this definition.~~
- ~~(i) *Connection* shall mean the attachment of the drop to the first radio or television set or to an electronic terminal device or converter of the subscriber.~~
- ~~(j) *Converter* means an electronic device which converts signals to a frequency not susceptible to interference with the television receiver of a subscriber, and, by an appropriate channel selector, also permits a subscriber to view all basic subscriber signals included in the basic service delivered at designated converter dial locations.~~
- ~~(k) *Council* shall mean the governing body of the City of Minneapolis.~~
- ~~(l) *Dedication* shall mean those rights of way maintained for the benefit of the public and controlled by the city, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a cable communications system, its structures or equipment.~~
- ~~(m) *Drop* shall mean the coaxial cable that connects the facility to the nearest feeder cable of the cable network.~~

- ~~(n) *Easement* shall mean those rights-of-way owned by the city, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a cable communications system, its structures or equipment.~~
- ~~(o) *FCC* shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.~~
- ~~(p) *Gross annual revenues* shall mean all revenue derived directly or indirectly by the company, its affiliates, subsidiaries, parent, and any person in which the company has a financial interest, from or in connection with the operation of the cable communications system governed by this ordinance; provided, however, all revenues shall include, but not be limited to, basic subscriber service, monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, income earned from deposits (but not deposits themselves), studio rental, production equipment, personnel fees, and advertising revenues; however, this shall not include any taxes on services furnished by the company herein imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the company on behalf of said governmental unit. A reasonable amount may be deducted by company from gross annual revenues to reflect uncollectible accounts. Uncollectible accounts shall be determined by the company's independent auditors, applying generally accepted accounting principles. The city shall have the right to conduct an independent audit of all transactions resulting in deductions from company's gross revenues, to determine whether or not said deductions are consistent with the terms and conditions of this provision. Said audit will be conducted in accordance with the provisions of Article II, section 13. Company shall fully cooperate with city and shall provide city with all information, books, data and other records required by city to perform an audit.~~
- ~~(q) *Installation* shall mean the connection of the system from feeder cable to subscribers' facilities.~~
- ~~(r) *Offering of the company or offering* shall mean that document defining the state-of-the-art cable system provided by company to the City of Minneapolis and incorporated herein, including Addendum A.~~
- ~~(s) *Parental control device* is an optional mechanical or electrical capability or accessory to a subscriber's terminal which, when activated, inhibits the viewing of a certain channel or channels provided by way of the cable communications system.~~
- ~~(t) *Premium/pay service* shall mean those services which are not subject to a regulation by the city.~~
- ~~(u) *Public property* is any real property owned by the city other than a highway, sidewalk, easement or dedication.~~
- ~~(v) *Residential subscriber service* shall mean any cable communications service provided on that part of the cable communications system's electronic frequency~~

~~spectrum allocated for residential use as defined in Addendum A, section 1A(2) to the Minneapolis cable communications franchise ordinance.~~

~~(w) *Residential subscribers* shall mean any person or entity who subscribes to all or part of the residential subscriber services provided by company, whether or not a fee is paid for such service.~~

~~(x) *Residential unit* shall mean any single family dwelling, apartment unit or apartment building recreation or common area.~~

~~(y) *Scrambler/descrambler* refers respectively to the equipment installed to the cable communications system's headend equipment and subscriber terminal used to isolate pay cable and other ancillary service channels from basic service which is accomplished by electronically distorting the signal prior to its transmission through the cable communications system and reconstituting the signal at each authorized location for subsequent display.~~

~~(z) *Sidewalk* is that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including parkways, and which is not on private lands.~~

~~(aa) *Street* shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the city for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the city which shall, within their proper use and meaning, entitle the city and the company to the use thereof for the purpose of installing or transmitting cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a cable system.~~

~~**Section 3. Grant.** The city hereby grants to company a nonexclusive cable communications system franchise subject to all the terms and conditions as herein provided.~~

~~**Section 4. Rights and privileges of company.** The franchise granted by the city pursuant to this ordinance shall grant to the company the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the highways, sidewalks, easements, rights-of-way, dedications and other public property now in existence and as may be created or established during its term, any poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable communications system for the interception, sale, transmission and distribution of television programs and other audiovisual electrical and/or data signals and the right to transmit the same to the inhabitants of the city on the terms and conditions hereinafter set forth, subject to all applicable laws and regulations.~~

~~**Section 5. Agreement, location of agreement.** Upon adoption of this franchise and execution hereof by the company, the company agrees to be bound by all the terms~~

and conditions contained herein.

The company also agrees to provide all services or offerings specifically set forth in the "offering of the company" to provide cable communications service within the boundaries of the City of Minneapolis specified in Article I, section 8 hereof; and, by its acceptance of this franchise, the company specifically acknowledges and agrees that the "offering of the company," including all promises, offers, representations and inducements contained therein is specifically incorporated by reference and made an integral part of this franchise and this ordinance. The company further agrees and acknowledges that all promises, offers, representations and inducements contained in the "offering of the company" were freely and voluntarily made to the city by the company.

The original documents listed above shall be permanently kept and filed in the office of the city clerk, and the originals or reproductions thereof shall be available for inspection by the public during normal business hours. The "offering of the company" shall be reproduced at the expense of the company and shall be available at the following locations:

- (a) Office of the city clerk, three (3) copies.
- (b) Cable communications officer, ten (10) copies.
- (c) Municipal information library, three (3) copies.
- (d) Office of the city attorney, three (3) copies.
- (e) Local office of the company, two (2) copies.
- (f) Main branch of the Minneapolis Public Library, one copy.

Whenever the City of Minneapolis enacts any amendment to this franchise which is accepted by the company, the company shall, to the extent such amendment changes any term, condition, promise, offer, representation or inducement contained in the "offering of the company," incorporate such amendment into the "offering of the company" no later than ninety (90) days after the effective date of said amendatory ordinance. The company shall, at its own expense, produce sufficient copies of those portions of the "offering" which have been affected by the enactment of the amendatory ordinance to enable distribution of amended portions of the "offering" to the locations delineated in the preceding paragraph of this section. The "offering" shall accurately incorporate any amendments or modifications made thereto. The integration and incorporation of amendatory language into the company's "offering" shall be subject to the approval of the cable officer. Furthermore, to the extent that Addendum A of the Minneapolis Cable Communications Franchise Ordinance is inconsistent with any ordinance amending this ordinance, said Addendum A shall be conformed within a reasonable time to reflect changes made in said amendatory ordinance, without further formal council action.

In the event of conflicts or discrepancies between any part of the "offering of the company" and the provisions of this ordinance, those provisions which provide the

greatest benefit to the city, in the opinion of the council, shall prevail.

Section 6. Term. ~~The term of the franchise to be granted by the city pursuant to this ordinance shall be for a period up to and including November 30, 2004, provided, that in the event that the extension of the franchise term provided for herein is deemed to deprive the city of rights otherwise preserved to it by the Cable Communications Policy Act of 1984 (CCPA), which are presently "grandfathered" by virtue of the fact that this franchise was enacted prior to the effective date of the CCPA, the franchise shall be only for a period of fifteen (15) years from and after December 1, 1982, and renewal shall take place through negotiation or in accordance with the renewal requirements herein or in accordance with the requirements of Section 626 of the CCPA, prior to December 1, 1997.~~

~~Any successor in interest to this franchise shall also assume and perform all obligations to the city entered into by any former successor in interest, transferee or assignee of those rights initially granted to Minneapolis Cablesystems, Inc. Said obligations are to be performed as required by this ordinance, the amendments thereto and acceptances thereof.~~

Section 7. Minnesota Cable Communications Board. ~~Pursuant to Minnesota Statutes, Sections 238.05, subdivision 10, and 238.09, this franchise ordinance shall be subject to the rules of the Minnesota Cable Communications Board.~~

Section 8. Area. ~~This franchise is granted for the below-described area of the City of Minneapolis as it exists and as the city's borders may from time to time be changed:~~

~~All that part of the City of Minneapolis lying southerly and westerly of the following center line: Beginning at the intersection of 45th Street West and France Avenue South; thence easterly along the center line of 45th Street West to the point of intersection with Upton Avenue South; thence southerly along the center line of Upton Avenue South to the point of intersection with 47th Street West.~~

~~All that part of the City of Minneapolis lying southerly and easterly of the following center line: Beginning at the intersection of Upton Avenue South and 47th Street West; thence easterly along the center line of 47th Street West to the point of intersection with Lake Harriet Parkway; thence southerly, easterly, and northerly along the center line of Lake Harriet Parkway to the point of intersection with 46th Street West; thence easterly along the center line of 46th Street West to the point of intersection with Colfax Avenue South; thence northerly along the center line of Colfax Avenue South to the point of intersection with 45th Street West; thence easterly along the center line of 45th Street West to the point of intersection with Pleasant Avenue South; thence northerly along the center line of Pleasant Avenue South to the point of intersection with 42nd Street West; thence easterly along the center line of 42nd Street West to the point of intersection with Nicollet Avenue South; thence northerly along the center line of Nicollet Avenue South to the point of intersection with West Lake Street West; thence easterly along the center line of West Lake Street to the point of intersection with 1st Avenue South; thence northerly along the center line of 1st Avenue South to the point of intersection with 25th Street East; thence easterly along the center line of 25th Street East and the extension thereof to the point of intersection with 3rd Avenue South; thence continuing easterly along the center line of 25th Street East and the extension thereof to the point of~~

~~intersection with the center line of Interstate 35W; thence northerly along the center line of Interstate 35W to the point of intersection with 24th Street East; thence easterly along the center line of 24th Street East to the point of intersection with 10th Avenue South; thence northerly along the center line of 10th Avenue South to the point of intersection with 21st Street East; thence easterly along the center line of 21st Street East to the point of intersection with Bloomington Avenue South; thence northerly along the center line of Bloomington Avenue South to the point of intersection with Franklin Avenue East; thence easterly along the center line of Franklin Avenue East to the point of intersection with Cedar Avenue South; thence northerly along the center line of Cedar Avenue South to the point of intersection with Washington Avenue South; thence easterly along the center line of Washington Avenue South to the intersection of 19th Avenue South; thence northerly along the center line of 19th Avenue South to and across the bridge known as the 10th Avenue Southeast Bridge; and to the point of intersection with Second Street Southeast; thence southerly and easterly along the center line of Second Street Southeast to the point of intersection with 11th Avenue Southeast; thence northerly and easterly along the center line of 11th Avenue Southeast and the extension thereof to the point of intersection with the center line of Como Avenue; thence easterly along the center line of Como Avenue to the easterly boundary line of the City of Minneapolis and there terminating.~~

~~**Section 9. Franchise fees and costs.** (a) *Franchise fee.* The city shall, by ordinance, set a franchise fee of five (5) per cent of the company's gross annual revenues, which fee may be subject to renegotiation at such time as laws and regulations permit. The company and the city shall cooperate in obtaining any necessary approvals from the FCC.~~

~~(b) *Advance on franchise fees.* Within sixty (60) days of commencement date, company shall initiate franchise fee payment to city at the rate of twenty-five thousand dollars (\$25,000.00) for the first year, and at a minimum rate of seventy-five thousand dollars (\$75,000.00) each year thereafter, until the year in which the computed franchise payment of five (5) per cent of gross revenues first exceeds the amount of seventy-five thousand dollars (\$75,000.00). These payments are to be considered in advance of franchise payments and shall be credited in future years to those franchise fees that exceed two hundred and fifty thousand dollars (\$250,000.00). Such advance fees shall not be recoverable from the city in the event that the aggregate of future franchise fees does not exceed the total amounts of the advances. Interest earned by city on such advance payments shall not be considered a part of the franchise fee.~~

~~**Section 10. Police powers.** In accepting this franchise, the company acknowledges that its rights hereunder are subject to the police power of the city to adopt and enforce general ordinances necessary to safety and welfare of the public; and, it agrees to comply with all applicable general laws and ordinances enacted by the city pursuant to such power.~~

~~Any conflict between the provisions of this franchise and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the city, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to the company or cable communications system which contains provisions inconsistent with this franchise shall prevail only if upon such exercise, the city finds an emergency exists constituting a danger to health, safety, property or general welfare or~~

~~the city finds such exercise is mandated by law.~~

~~**Section 11. Cable communications franchise required.** No cable communications system shall be allowed to occupy or use the streets of the city or be allowed to operate without a cable communications franchise.~~

~~**Section 12. Reserved.**~~

~~**Section 13. Use of company facilities.** The city shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the company any wires and pole fixtures that do not unreasonably interfere with the cable communications operations of the company; provided, however, that the city will hold company harmless for any damages resulting from the city's negligent installation or use of said wires and/or poles or pole fixtures.~~

~~**Section 14. Rates.** (a) The city shall initially set, by ordinance, rates in accordance with the company's "offering" for a cable communications franchise. Company shall not increase the initial rate for Tier I programming before December 31, 1988. The procedure to change subscriber rates for Tier I programming other than the optional pay services or programming or equivalent services of any unregulated service tiers, as available, or programming of the same type as outlined in Addendum A, section 1C1c(3)(g), shall be in accordance with Article III, sections 2 and 5, and increases in rates shall be based upon the concept of fair and reasonable rates to both the company and subscribers which, in the aggregate, meet all applicable costs of service provided by the company including fair return on invested capital, assuming efficient and economical management. Individual residential subscriber contracts, if any, may not exceed twelve (12) months unless after twelve (12) months the contract may be terminated without penalty at the option of the subscriber.~~

~~(b) Rates for all residential subscriber services and residential subscriber installations to be nondiscriminatory. Rates for all residential subscriber services and residential subscriber installations shall be nondiscriminatory. Rates for residential subscriber services and residential subscriber installation shall not be considered discriminatory when said rates are uniform throughout the city for all residential subscribers, are imposed in accordance with specific exemptions stated in this section or are imposed in accordance with specific exemptions contained in the Minneapolis cable communications franchise ordinances or the Minneapolis cable communications rate ordinances, such as bulk monthly rates, nonstandard installations, waiver of installation fees for thirty (30) days after service is first available to each home, etc.~~

~~For purposes of this section, nonuniform rates or charges, established for the purpose of experimentation, test marketing, research and development or promotion, shall not be considered discriminatory, providing that the procedures set out herein are complied with.~~

~~Sixty (60) days prior to the implementation of nonuniform rates or charges for the purpose of experimentation, test marketing, research and development or promotion, the company shall provide written notice to the city's cable officer, clearly identifying each proposed nonuniform rate or charge and the purpose for its implementation. An expiration date shall be included for each rate or charge established for experimentation,~~

~~test marketing, research and development or promotion, not to exceed twelve (12) months from the date each such charge or rate is implemented.~~

~~If the company desires to extend any nonuniform rate or charge implemented for the purpose of experimentation, test marketing, research and development or promotion beyond the expiration date, the company shall, thirty (30) days prior to the expiration of the rate or charge, provide written notice to the city's cable officer, specifying each and every reason for requesting an extension. If the company proposes to extend a rate or charge beyond twelve (12) months from the date of implementation, the city, through its cable officer, reserves the right to require the company to make an application for exemption pursuant to the conditions set out below in this section. If the company proposes to impose nonuniform rates or charges for experimentation, test marketing, research and development or promotion similar to nonuniform rates previously implemented by the company pursuant to this section, the city reserves the right to require company to make an application for exemption pursuant to the conditions set out below in this section.~~

~~An application to create an exemption not contained herein or within the cable franchise or rate ordinances shall be made in accordance with Article III, section 2, of this ordinance. After the city has accepted the company's application to create a new exemption in accordance with the application procedures set out in Article III, section 2, of this ordinance, the city shall make a determination to accept, reject, limit or modify the proposed exemption within one hundred twenty (120) days from the date the company's application is accepted by the city. If the city fails to act on the company's application for exemption within one hundred twenty (120) days after acceptance of company's application, the exemption shall be deemed approved and shall not be considered discriminatory. Any time limit can be waived with the consent of both the city's governing body and the company.~~

~~If the company establishes and implements rates or charges for residential subscriber services or residential subscriber installations that are not uniform throughout the city for all residential subscribers, are not established or implemented in accordance with specific exemptions stated in this section or are not established or implemented in accordance with specific exemptions contained in the Minneapolis cable communications franchise ordinances or the Minneapolis cable communications rate ordinances, said rates shall be considered discriminatory and shall also be considered a material violation of this franchise agreement and the city may impose penalties or take other action in accordance with Article III, sections 13, 14 and/or 15 of this franchise ordinance and agreement.~~

~~The city shall not arbitrarily or capriciously refuse to create an exemption requested by company in accordance with the procedures set out in this section. If the city does not approve an exemption requested by company pursuant to this section, the city shall make written findings, within thirty (30) days after such decision, stating its reasons for not approving the exemption requested by company.~~

~~Nothing contained herein shall be construed to be rate regulation in contravention of applicable state or federal law, regulation or rule or authorization for such regulation.~~

~~Nothing in Article I, section 14(b) shall be deemed to create a remedy in favor of~~

~~private parties or to create a third party cause of action arising from alleged violations or noncompliance with this section, and the city shall be the exclusive authority to compel enforcement of Article I, section 14(b).~~

~~**Section 15. Notices.** All notices from the company to the city pursuant to this franchise, unless otherwise designated, shall be to the city clerk and to the cable communications officer. The company shall maintain within the city, throughout the term of this franchise, an address for service of notices by mail. The company shall also maintain within the city, a local office and telephone number for the conduct of matters related to this franchise during normal business hours.~~

~~**Section 16. Letter of credit.** (a) Within ten (10) days of the commencement date, the company shall deposit with the city a letter of credit from a local financial institution in the amount of one hundred thousand dollars (\$100,000.00). The form and content of such letter of credit shall be approved by the city attorney. The letter of credit shall be used to ensure the faithful performance by the company of all provisions of this franchise. The letter of credit shall be used also to ensure compliance by the company with all orders, permits and directions of any agency, commission, board, department, division or office of the city having jurisdiction over its acts or defaults under this franchise, and to secure the payment by the company of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system.~~

~~(b) If the company fails to pay the city any compensation to which it is entitled under this ordinance, the city finance officer shall, upon recommendation of the cable communications officer and the city attorney, and pursuant to the due process provisions of Article III, section 14, immediately request and receive from the financial institution holding the letter of credit, payment of the amount thereof in such sums as are sufficient to recover for the city any compensation to which it is entitled under this ordinance, together with any interest that may be due as a result of the company's failure to make timely payment.~~

~~If the company fails, within ten (10) days after notice by the city, to pay the city any taxes due and unpaid or any damages, costs or expenses which the city is compelled to pay by reason of any act or default of the company in connection with this franchise, the city finance officer, upon recommendation of the cable communications officer and the city attorney, and pursuant to the due process provisions of Article III, section 14, shall, after the expiration of the ten-day period, withdraw from the financial institution holding the letter of credit an amount sufficient to recover the unpaid taxes or the damages, costs or expenses which the city is compelled to pay by reason of any act or default of the company in connection with the franchise, together with interest thereon.~~

~~If the company fails, within ten (10) days after notice by the city, to comply with any provision of this franchise which the cable communications officer and the city attorney reasonably determine can be remedied by demand on the letter of credit, and such determination is made after the company has been provided due process as set forth in Article III, section 14, the city finance officer shall immediately request and receive from the financial institution holding the letter of credit, payment of the amount thereof, together with interest accrued from the date of notice.~~

~~If the cable communications officer shall find that the company has violated one or more of the terms, conditions or provisions of Article III, section 13 and the company does not dispute the finding, or the finding of violation is sustained by the city council after due process as outlined in Article III, section 14, the city finance officer shall request and receive from the financial institution holding the letter of credit all penalties assessed until the company has satisfactorily remedied the term, condition or provision violated.~~

~~No penalty shall be imposed by city against company for any violation of this franchise without the company being afforded due process of law.~~

~~All monies drawn against the letter of credit shall be placed in the city's general fund. Interest, when accrued pursuant to Article I, section 16, shall be at the current prime rate.~~

~~(c) Whenever the city shall receive payment of any amount against the letter of credit pursuant to Article I, section 16, the company shall pay to or deposit with the financial institution with whom it maintains said letter of credit an amount sufficient to restore the letter of credit to its full value of one hundred thousand dollars (\$100,000.00) within ten (10) days after the company has been tendered delivery by registered mail, return receipt requested, of the notice from the city finance officer of the reason for the withdrawal, the date of withdrawal and the amount thereof. The city finance officer and the cable communications officer shall be sent a verified statement from the local financial institution holding the letter of credit showing restoration of the letter of credit to its full value of one hundred thousand dollars (\$100,000.00) within twenty-four (24) hours after receipt by said financial institution of sufficient funds from the company to restore said letter of credit to one hundred thousand dollars (\$100,000.00).~~

~~(d) The rights reserved to the city with respect to the letter of credit are in addition to all other rights of the city, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the city may have.~~

~~(e) The letter of credit shall contain the following endorsement:~~

~~"It is hereby understood and agreed that this letter of credit may not be cancelled by the financial institution nor the intention not to renew be stated until thirty (30) days after receipt by the city clerk, city attorney and cable communications officer, by registered mail, of a written notice of such intention to cancel or not to renew. This letter of credit shall not be subject to cancellation while the company is in default."~~

~~(f) Neither withdrawal of money by the city pursuant to this provision nor wording contained herein shall be construed as a limitation of the company's right to contest penalties under Article III, section 14.~~

~~(g) The letter of credit shall be filed with the city finance officer.~~

Section 17. Bonds. ~~(a) Upon the commencement date, the company shall file with the city clerk and shall maintain, until construction is completed or until company has~~

~~complied with the terms of 85-Or-153, whichever occurs last, the following bond which shall be purchased from a company licensed to do business in Minnesota: A faithful performance and labor and material bond running to the city in the penal sum of five hundred thousand dollars (\$500,000.00) conditioned upon the faithful performance of the company of all the terms and conditions of this agreement and upon the further condition that, in the event the company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of property of the company, plus costs and reasonable attorney's fees up to the full amount of the bond.~~

~~(b) Following the completion of the bonding requirement of section 17(a) above and prior to the commencement of any new construction, the city finance officer may require the company to file with the city clerk and to maintain throughout the term of this agreement, a labor and material payment bond up to a sum of two hundred fifty thousand dollars (\$250,000.00), said bond to be placed with a company licensed to do business in the State of Minnesota. The company shall notify the city by registered mail, return receipt requested, of all new construction. The company may incorporate this bond coverage into the bond in and for the amount required under subsection (c) below which shall thereby satisfy this requirement.~~

~~(c) Following the completion of the bonding requirement of section 17(a) above and until such time as the company has liquidated all of its obligations with the city, the city shall require the company to file with the city finance officer and to maintain throughout the term of this agreement a faithful performance bond running to the city up to the penal sum of two hundred fifty thousand dollars (\$250,000.00) conditioned upon the faithful performance of the company of all terms and conditions of this agreement and upon the further condition that in the event the company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the city as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property to the company plus costs and reasonable attorney's fees up to the full amount of the bond. Said bond shall be purchased from a company licensed to do business in Minnesota.~~

~~(d) The bonds shall be subject to the approval of the city attorney and shall contain the following endorsement:~~

~~"It is hereby understood and agreed that this bond may not be cancelled until sixty (60) days after receipt by the city clerk, city finance officer, city attorney and the cable communications officer, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew. This bond shall not be subject to cancellation by surety while the company is in default."~~

~~(e) The rights reserved by the city with respect to the bonds herein are in addition to all other rights and remedies the city may have under this franchise or any other law.~~

Section 18. Liability and insurance. ~~(a) The company agrees by the acceptance of this franchise to indemnify, keep and save the city free and harmless from liability on~~

~~account of injuries or damage to persons or property arising out of the construction, maintenance, repair and/or operation of the company's cable communications system or arising out of any contract entered into by the company pursuant to Article III, sections 8 and 9 of this franchise. In the event that suit shall be brought or that recourse or damages shall be sought against the city, either independently or jointly with the company on account thereof, the company, upon notice by the city, shall defend the city in any such suit or action at the cost of the company, and, in the event of final judgment being obtained against the city either independently or jointly with the company, the company shall indemnify the city and pay such judgment with all costs and hold the city harmless therefrom. The company and the city shall not be liable for the acts or omissions of the Minneapolis Telecommunications Network, Inc. ("MTN") nor shall the company or the city be liable or responsible for any costs or expenses for representation, indemnification, or insurance relating to the MTN. Pursuant to this section, the company shall indemnify and insure the city or the MTN for any public interest and/or public service programming which the company may undertake pursuant to an agreement with the city or with the MTN pursuant to Article III, sections 8 and 9.~~

~~(b) The company shall pay, and by its acceptance of the franchise specifically agrees that it will pay, all expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the city attorney or his assistants or any employees of the city or its agents.~~

~~(c) The company shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance with a company licensed to do business in the State of Minnesota insuring the city and the company with regard to all damages mentioned in subsection (a) in the minimum amount of:~~

- ~~(1) Two million dollars (\$2,000,000.00) for property damage to any one person;~~
- ~~(2) Two million dollars (\$2,000,000.00) for property damage in any one accident;~~
- ~~(3) Two million dollars (\$2,000,000.00) for personal injury to any one person;~~
- ~~(4) Two million dollars (\$2,000,000.00) for personal injury in any one accident; and~~
- ~~(5) Twenty-five million dollars (\$25,000,000.00) excess liability insurance for personal injury and property damage combined.~~
- ~~(6) Insurance policies obtained by company pursuant to this provision shall satisfy the insurance requirements set forth in Appendix H, Chapter 1, Article I, Section 19, Article 1.~~

~~(d) The initial insurance policy or policies obtained by the company in compliance with this section must be approved by the city attorney and such insurance policy or policies, along with written evidence of payment of required premiums, shall be filed and maintained with the city finance officer during the term of the franchise, and may be changed from time to time to reflect rising liability limits. The company shall immediately~~

~~advise the city attorney and cable communications officer of any litigation that may develop that would affect this insurance.~~

~~(e) Neither the provisions of this section nor any damages recovered by the city thereunder shall be construed to or shall limit the liability of the company under this franchise issued hereunder for damages.~~

~~(f) All insurance policies maintained pursuant to this franchise shall contain the following endorsement:~~

~~"It is hereby understood and agreed that this insurance policy may not be cancelled nor the intention not to renew be stated until sixty (60) days after receipt by the city finance officer, city attorney and cable communications officer, by registered mail, of written notice of such intention to cancel or not to renew."~~

~~(g) Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the company's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.~~

~~(h) The company shall be liable and/or responsible only for claims pertaining to the construction, maintenance, and operation of its area specified in Article I, section 8.~~

Section 19. Indemnification. ~~The company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the city, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities and judgments for damages for the acts or omissions of the company, its officers, employees, or agents (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the city in connection therewith):~~

~~(a) Arising out of any claim based on operation of this franchise by company or arising out of any contract entered into by the company pursuant to Article III, sections 8 and 9 of the franchise;~~

~~(b) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to MTN programming), unless otherwise provided in an agreement between the company and the city or the company and the MTN;~~

~~(c) Arising out of the company's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to company in its business hereunder; and~~

~~(d) Arising out of any claim wherein damages or any other relief is sought as a result of the city's cable communication franchising or amendment procedure or as a result of the granting of this franchise or any amendment thereto.~~

~~The foregoing indemnity is conditioned upon the following: The city shall give the company reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the city from cooperating with company and participating in the defense of any litigation by its own counsel at the company's cost and expense. Costs and expenses shall include the reasonable value of any services rendered by the city attorney or his assistants or any employees of the city or its agents. The city's failure to give such notice or cooperate in the representation regarding such claims, actions or proceedings shall void any and all company responsibilities and liabilities relating to the representation, indemnification or other obligations therefrom.~~

~~No recovery by the city of any sum by reason of the letter of credit required in Article I, section 16, hereof shall be any limitation upon the liability of the company to the city under the terms of this section, except that any sum so received by the city shall be deducted from any recovery which the city might have against the company under the terms of this section.~~

~~**Section 20. Affirmative action and women/minority business programs.** (a) [Generally.] The company shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, marital status, or status with regard to public assistance. The company shall comply at all times with all other requirements of federal, state and local laws and regulations, and the requirements of all orders authorized by city action relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.~~

~~(b) *Company's EEO commitment.* Throughout the term of the franchise, the company shall comply with and be subject to the Code of Ordinances, Chapter 25 [sic], section 139.50, as amended, and except as otherwise provided herein, the requirements of which are incorporated herein by reference. The company shall strictly adhere to the equal employment opportunity requirements of the federal government as well as to the requirements of state and local laws and regulations.~~

~~(c) *Affirmative action employment plan.* The company, its assigns, subsidiaries, subsequent purchaser, or successors shall prepare and provide to the city for its approval a written affirmative action plan within sixty (60) days after the commencement date, or in the case of an assignment, grant, or sale of the franchise, prior to the date of such assignment, grant or sale. The company shall not commence construction prior to the approval of such plan by the city. The company reserves the right to amend the affirmative action plan for the operations work force during the term of the franchise subject to city approval. The affirmative action plan shall include but not be limited to the following:~~

- ~~(1) Minimum employment goals which the company will use its best efforts to achieve at each level of employment in the company's operations work force during the post-construction term of the franchise. The company shall make those efforts consistent with statutory and city regulations, policies and programs, and shall further attempt to achieve a goal of twenty five (25) per cent of its operations work force consisting of minorities and fifty (50) per cent of its operations work force consisting of women. The goals for three (3)~~

categories (minority men, minority women, and nonminority women) shall be reported separately. The goals for minority employment shall be reflective of a cross-section of the availability for employment of each minority segment of the population.

- ~~(2) Minimum employment goals which the company will use its best efforts to achieve at each level of employment in the company's construction work force throughout the construction of the system. The company, and its subcontractors, shall make those efforts consistent with statutory and city regulations, policies and programs, as amended from time to time, to achieve the city's established construction work force goals for minorities and women. The goals for three (3) categories (minority men, minority women, and nonminority women) shall be reported separately. The goals for minority employment shall be reflective of a cross-section of the availability for employment of each minority segment of the population.~~
- ~~(3) Minimum goals for the utilization of minority business enterprises (MBE's), which the company will use its best efforts to achieve, shall be established at twenty (20) per cent and for women's business enterprise (WBE's) at ten (10) per cent. The goals for women's and minority business participation shall be reported separately, shall apply throughout the post-construction term of the franchise, and shall be applicable to all capital expenditures by the company including, without limitation, contracts and purchase orders for the acquisition of goods, services (including professional services), materials, supplies and equipment used in the construction, maintenance, and operation of its cable television system. Maximum use shall be made of the city's listing of MBE/WBE businesses. "Services," for purposes of this section, shall not include purchases of programming or premium services.~~
- ~~(4) A plan to employ and retain in employment to the maximum extent feasible persons who are handicapped.~~
- ~~(5) A training program or scholarship or funding equivalent, for available positions, which utilizes local resources and which ensures the hiring, promotion, and retention of women, minorities and handicapped persons.~~
- ~~(6) Assignment of an affirmative action coordinator by the company to develop, implement, and monitor the affirmative action plan and act as liaison with the city in all matters regarding affirmative action and women/minority business enterprise participation.~~
- ~~(7) Other provisions normally part of an affirmative action plan including but not limited to an affirmative action/EEO policy statement, methods for dissemination of the policy and plan, recruitment of employees, complaint procedure, subcontractor responsibility, and audit and reporting systems. The company shall provide to the city's affirmative action officer written reports in a form acceptable to the city of the company's compliance with the affirmative action plan. Such reports shall be submitted to the city each quarter and no later than ten (10) working days following the end of the quarter in which the reported activity occurred.~~

~~(8) As used herein, (1) "minority" or "minorities" means Blacks, Hispanics, Asian/Pacific Islanders, American Indians, and Eskimos; and (2) "minority" or "women's business enterprise" means a business at least fifty-one (51) per cent of which is owned and controlled by minorities or women or, in the case of a publicly owned corporation, at least fifty-one (51) per cent of the stock of which is owned by minorities or women and whose management and daily business operations are controlled by one or more such individuals.~~

~~(d) *CETA eligible.* The company shall develop a plan to employ and retain in employment to the maximum extent feasible Minneapolis residents who are CETA eligible or who are eligible for other federal or state job training programs. The company shall submit such a plan as an addendum to the affirmative action plan and shall submit reports as an addendum to the affirmative action reports.~~

~~(e) *Local purchasing and hiring policy.* Company shall establish a policy of utilizing locally based firms for purchases and construction subcontracts, and employing local residents within its own operations, to the maximum extent feasible. Company shall provide city with a written report of local purchasing and hiring achievement each three (3) months for the duration of the franchise.~~

~~(f) *Penalties.* The city, in its sole judgment, upon recommendation of the affirmative action officer, shall determine whether the company has made best efforts consistent with statutes, ordinances and other regulations to achieve the goals and objectives of this section. If the city, after due process in accordance with Article III, section 14, finds that the company has not made such best efforts, the city shall apply the following:~~

~~(1) A fine of one thousand dollars (\$1,000.00) per day for each day in which the company fails to comply with the reporting requirements set forth in this section. Imposition of said penalty shall be stayed for five (5) working days after each report is due in the event that company should file the report during that period.~~

~~(2) A fine of not less than two thousand dollars (\$2,000.00) per month or more than twenty thousand dollars (\$20,000.00) per month for each month in which the company is otherwise determined not to be in compliance with this section, that is, whether it has made best efforts consistent with statutes, ordinances and other regulations to achieve the goals and objectives of this section.~~

Section 21. Rights of individuals. ~~(a) *Invasions of privacy and of personal rights prohibited.* In the conduct of providing its services or pursuit of any collateral commercial enterprise resulting therefrom, company shall take any and all necessary action to prevent an invasion of a subscriber's or general citizen's right to privacy or other personal rights as such rights are delineated and defined by applicable law. Company shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.~~

~~(b) No signals, including signals of a Class IV cable communication channel, shall be transmitted from a subscriber's terminal, dwelling or place of business except as~~

~~required to provide a service authorized by the subscriber. The company, the city and any other person shall neither initiate nor use any procedure or device for procuring information or data from a subscriber's terminals or terminal by any means, without the prior valid authorization of the affected subscriber. Valid authorization shall mean written approval from the subscriber which shall not have been obtained from the subscriber as a condition of service, except in those situations in which the nature of the service provided requires authorization or authorization is needed to allow for billing. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission with full knowledge of its provisions. After the first year of authorization and during the month of the year of the authorization's initial signing, the company shall, for each year said authorization is in effect without revocation, mail a notice to each authorizing subscriber informing him or her of their right to revoke said authorization for transmission from their terminal. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. It shall not be considered a penalty to terminate service in those situations where the subscriber revokes or fails to renew authorization when the nature of the service provided requires authorization or authorization is needed for billing. Such authorization shall be required for each type or classification of signals transmitted from a subscriber's terminal, dwelling or place of business.~~

~~(c) Neither the company, the city, their agents, their employees nor anyone else shall sell, provide or otherwise make available to anyone any information about subscribers obtained by monitoring transmission of any type of signal from a subscriber's terminal, dwelling or place of business, including but not limited to lists of names and addresses of subscribers or any list which identifies, by name, subscriber viewing habits or personalized data pertaining to a subscriber's use of any of company's services without the specific, written authorization of the subscriber to which the personalized data pertains. Data or information gathered by the company as a result of the subscriber's written authorization shall be made available to the authorizing subscriber in an understandable fashion, upon request, and, where applicable, shall specify the purpose for which the information is being gathered and to whom and for what fee the information is being sold.~~

~~(d) For purposes of this section, "personalized data" shall mean the name and address of an individual subscriber directly associated with data obtained on his or her use of specified services provided by or through the company. Nothing herein shall be construed to prevent, as a normal incident of commercial enterprise, the same or availability of "nonpersonalized" or "aggregated data" which is not personalized data as defined herein.~~

~~(e) Neither the company, the city, nor any of their agents shall tap or monitor, arrange for the tapping of monitoring, or permit any other person to tap or monitor, any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever, without the prior valid authorization of the affected subscriber as defined above, except routine maintenance of the system, polling with audience participation or audience viewing surveys to support advertising research regarding viewers where individual viewer behavior cannot be identified.~~

~~(f) Written permission need not be obtained by the company from the subscriber for electronic verification of systemwide integrity or monitoring for the purpose of billing,~~

~~provided that such electronic verification shall not monitor individual viewing patterns or practices without the valid authorization of the subscriber in accordance with the provisions of Article I, section 22(c).~~

~~*Additional permission of property owners may be required.* In addition to the company's right to construct its system in the city's public streets and right-of-ways under this ordinance, the company shall have the right to negotiate with utility companies and other owners (or tenants in possession) for the use of easements or servitudes. Where a property owner or tenant in possession has granted such an easement or servitude to another and when a company has acquired the right to use such easement or servitude, the company shall not be required to obtain written permission of the property owner or tenant in possession unless the company elects to do so.~~

~~*Landlord-tenant.* The company shall be required to provide service to individual units of multiple housing facilities, including but not limited to apartment buildings, condominiums, and cooperative housing, with all services offered to other dwelling units within the city, so long as the owner or management of the facility consents in writing, if requested by the company, to the following:~~

- ~~(a) To the company's providing of the service to units of the facility;~~
- ~~(b) To reasonable conditions and times for the installation, maintenance and inspection of the system on the facility premises;~~
- ~~(c) To reasonable conditions promulgated by the company to protect the company's equipment and to encourage widespread use of the system; and~~
- ~~(d) To not demand or accept payment from the company for permitting the company to provide service to the facility and to not discriminate on rental charges, or otherwise, between tenants who receive cable service and those who do not.~~

~~**Section 22. Public notice.** A public hearing before the appropriate city council committee shall be held prior to passage of any amendment to this ordinance. Notice of such hearing shall be by publication at least once in a local newspaper of general circulation at least seven (7) days prior to the hearing, and, commencing on the fifth day prior to the hearing, the company shall notify its subscribers of the hearing by announcement on at least one channel of its cable communications system, between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days. Such announcement shall be made on the most appropriate nonpremium/nonpay channel on which such announcement is feasible subject to approval of the cable communications officer. The city clerk shall be responsible for delivering the text of all announcements to the company in time for proper scheduling.~~

~~**Section 23. Service of process and consent to jurisdiction.** The company, KBL and KBLCOM, shall designate an agent within the city upon whom process against them may be served on behalf of the city or any other party in enforcing this franchise or in asserting any other right or claim. The company, and KBL and KBLCOM, for such purposes, and any other purposes, hereby consent to, and submit to, the laws, jurisdiction and courts of the State of Minnesota; provided, however, that KBLCOM and KBL shall not be construed to be doing business within the State of Minnesota solely as~~

a result of this provision.

Section 24. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 25. Captions. Section captions or headings are intended solely to facilitate reading and reference to the provisions of this franchise ordinance and shall not affect the meaning or interpretation of any provision.

Section 26. Certificate of confirmation. The franchise shall cease to be of any force and effect if the company fails to obtain either a certificate of confirmation or renewal of a certificate of confirmation from the Minnesota Cable Communications Board; provided, however, that the company may operate its cable communications system while the application for renewal is under consideration by the board.

Section 27. Time of the essence. Whenever this ordinance shall set forth any specific time for an act to be performed by or on behalf of the company or the city, such time shall be deemed of the essence. Any failure of the company to perform within time allotted shall always be sufficient grounds for the city to invoke an appropriate penalty including possible revocation of the franchise, pursuant to the due process procedures of Article III, section 14.

ARTICLE II. CABLE COMMUNICATIONS SYSTEM EXTENSION, OPERATION, STANDARDS AND PROCEDURES

Section 1. Commitment by company. The commitment of the company is contained in the "offering of the company." The company agrees to perform all services or offerings relating to its area specified in Article I, section 8, set forth in its "offering," including all promises, offers, representations and inducements contained therein. The company further agrees that certain portions of its "offering" or a summary thereof may be set forth as Addendum A to this franchise ordinance and that said Addendum A shall contain those portions of the "offering of the company" or a summary thereof deemed by the city and the company to be of most use to the subscriber. The fact that certain portions of the company's "offering" or a summary thereof are reproduced as Addendum A shall not be construed so as to make it appear that those portions of the "offering" reproduced in Addendum A have more significance or importance than portions not reproduced. The company specifically reaffirms that the entire "offering of the company" is incorporated into this ordinance by reference. In the event of conflict or discrepancies between any parts of the "offering of the company" and Addendum A, those provisions which provide the greatest benefit to the city in the opinion of the city council, shall prevail.

Section 2. Service availability and record request. The company shall provide cable communications service throughout the entire franchise area pursuant to Article I, section 8, and the provisions of this franchise and shall keep a record for at least three (3) years of all requests for service received by the company in areas where service is being provided. This record shall be available for public inspection at the local office of

the company during regular office hours.

Section 3. Cable communications system construction. (a) Construction map and schedule.

~~(1) *Map and plan.* The company has submitted a construction plan which is incorporated herein by reference and made a part hereof in Addendum A. The plan consists of a map of the entire franchise area and clearly delineates division of the city into five (5) construction zones per franchise area, indicating the date upon which construction shall be completed in each zone as defined in Addendum A and Article II, section 3 herein. The construction plan shall be made available for public inspection during normal business hours at the main office of the company at the company's expense.~~

~~(2) *Construction permits.* Notwithstanding any other provision of this ordinance, the company shall make good faith and diligent effort to obtain all necessary permits and clearances within a reasonable time. Within sixty (60) days after the commencement date, the company shall apply for all permits and clearances needed to begin construction or maintain, upgrade or otherwise change the cable system. Company shall pay for all permits acquired from city through July 1, 1988, after which payment for future permits shall be considered to be part of the franchise fee. Nothing contained herein shall relieve company of their obligation to furnish insurance, bonds or such other securities or assurances as may be required in the Minneapolis Code of Ordinances for obtaining permits, clearances, etc.~~

~~(3) *Start of construction.* Substantial construction in accordance with the plan submitted by the company shall start within seven (7) months after the commencement date.~~

~~Within three (3) months and five (5) months after the commencement date, the company shall report to the city and may request a change in its construction start date.~~

~~(4) *Completion of individual construction zones.* The company shall complete construction of individual zones set forth below pursuant to the construction plan in Addendum A:~~

TABLE INSET:

<i>Map Construction Zone</i>	<i>Completion Date (months from commencement date)</i>
A	No later than 12
B	No later than 18
C	No later than 24
D	No later than 30
E	No later than 36

~~Within each zone, the company shall install and deliver residential service to~~

~~all residents requiring a standard installation within sixty (60) days after all residential distribution cable within the zone has been energized and the resident has ordered such service.~~

~~(5) *Completion of system construction.* The company shall complete system construction so as to offer residential service to all residents in its area requiring a standard installation within thirty-six (36) months after the commencement date. Consistent with sound engineering practice, construction shall be essentially concurrent in all areas of the city, so that no geographic portion of the city is discriminated against in receiving prompt service.~~

~~(b) *Early construction and extension.* Nothing in this section shall prevent the company from constructing the system in its area earlier than planned. However, any delay in the zone or system construction beyond the times specified in this section for commencement of construction, for completion of construction for any zone, or for completion of construction, shall require application to and consent by the city council. The city may not arbitrarily withhold consent for delay when the company has shown good cause for such delay provided that the city may attach reasonable conditions to ensure performance. Good cause for delay shall be presumed when the company shows, to the satisfaction of the council, that such delay was beyond its control or was not foreseeable. The company shall notify the city as soon as possible of any anticipated or actual delay.~~

~~(c) *Penalties for delay in construction.* The city may at its sole option apply any of the following penalties in connection with delays in completion of construction in accordance with the schedules due to causes which are within the company's reasonable control or which are reasonably foreseeable.~~

~~(1) *Failure to commence construction.* If, after the construction starting date indicated in subparagraph (a)(3) above, company has not substantially commenced construction and thereafter the company does not substantially commence construction within thirty (30) days of written notice of such failure from city, subject to the procedural provisions of Article III, section 14, city may impose a financial penalty of up to ten thousand dollars (\$10,000.00) per day for each day the company fails to substantially commence construction, or may commence termination proceedings, or both.~~

~~For any schedule delay that may occur, the burden of proof shall be on the company to demonstrate that such delay was beyond its reasonable control or was not reasonably foreseeable.~~

~~(2) *Failure to complete construction zones.* Upon a failure to meet construction completion schedules for the first four (4) construction zones as specified herein and in Addendum A, the city may impose a penalty of up to five hundred dollars (\$500.00) per day for each construction zone violation up to six (6) months and up to one thousand dollars (\$1,000.00) per day penalty, or reduce the duration of the franchise on a month-for-month basis for each month of failure to comply, or termination of the franchise, or both, for violations greater than six (6) months, subject to the due process provisions~~

~~of Article III, section 14. Construction shall be deemed to be completed when the system is energized so as to offer residential service to all residents within the zone requiring a standard installation.~~

~~(3) *Failure to complete construction of system.* Upon a failure to complete construction of the system as set forth in Addendum A and offer services to all residents of the city in its area as set forth in Article II, section 3 and Addendum A, and after thirty (30) days' notice by the city, the city may reduce the duration of the franchise on a month-for-month basis for each month of failure to comply, or the city may impose a fine up to a maximum of ten thousand dollars (\$10,000.00) per day for each day of violation, or both, subject to the due process provisions of Article III, section 14. In addition, where the company has failed to complete construction of the system in its area as set forth in Addendum A and Article II, section 3 herein, and after sixty (60) days' notice by the city, the city may terminate this franchise, subject to the provisions of Article III, section 15.~~

~~(4) *Noncumulative penalties.* The company shall pay all penalties imposed in accordance with the procedures required in Article III, section 14, for the phase of construction for which said penalty is imposed. When construction of said phase is completed, and if the company has paid all construction penalties properly imposed, the commencement and completion dates for any and all subsequent construction phases shall be adjusted to follow immediately thereafter. No fines shall be levied which result from delays in completion of an earlier phase if subsequent phases are completed within their initially proposed schedules, commencing from the new and adjusted date.~~

~~(d) *Service to residences mandatory.* The company shall offer residential service to all residences within the City of Minneapolis. However, should the company determine that provision of service to a residence or an area would be uneconomic, the company may apply to the cable communications officer for a temporary waiver from the requirement that such service be provided. Such application shall be in writing and shall set forth the factors upon which the company determined that provision of the service in question would be uneconomic.~~

~~In determining whether to grant such a temporary waiver, the cable communications officer shall consider, among other factors:~~

~~(1) The amount of the additional cost involved in providing the service;~~

~~(2) The likelihood of substantial short-term population growth in the area surrounding the residence; and~~

~~(3) Any other circumstances which would assist the company in recovering its additional investment required to provide the service without unduly burdening other subscribers.~~

~~Such a waiver shall not be unreasonably withheld. The city may reconsider its decision to issue the temporary waiver at any time upon thirty (30) days notice to the company.~~

~~If the cable communications officer should deny the company's request for a temporary waiver, such denial shall be in writing and state the reason(s) therefor. The company shall have the right to appeal the decision to the city council within ten (10) days of receipt of the cable communications officer's written order. Such appeal and any subsequent proceedings shall be governed by the due process provisions contained in Article III, section 14 herein.~~

~~(e) *New development underground.* In cases of new construction or property development where utilities are to be placed underground, the developer, utility or property owner shall give the company reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the company's installation of conduit, pedestals and/or vaults, and laterals to be provided at the company's expense, provided that such reasonable notice shall be given in writing to the company prior to the obtaining of a permit by the developer, utility or property owner from the city for the work to be performed. The company shall also provide specifications as needed for trenching.~~

~~Costs of trenching and easements required to bring service to the development shall be borne by the developer, utility or property owner, unless the work to be performed by the company shall necessitate expenditures by the developer, utility or property owner solely to accommodate the facilities of the company in which case the company shall bear that part of the cost; except that if the company fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer, utility or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by the company. Except for the notice of the particular date on which trenching will be available to the company, any notice provided to the company by the city of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the company prior to approval of the preliminary plat request.~~

~~(f) *Special agreements.* Nothing herein shall be construed to prevent the company from serving areas not covered under this section upon agreement with developers, property owners or residents.~~

~~(g) *Areawide interconnection of CATV systems.*~~

~~(1) The company shall comply with the rules and regulations established by the Minnesota Cable Communications Board (Chapter 15, 4 M.C.A.R. Sections 4.220 through 4.229) and cooperate with any interconnection corporation, regional interconnection authority or city, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the city.~~

~~(2) Upon city request, the company shall negotiate in good faith to interconnect the cable television system with contiguous cable systems. Within three (3) months of a city request, the company shall report to the city the results of the negotiations. Notwithstanding the above, the company is committed to, and shall, interconnect the cable system with all cable systems operated in the~~

~~Minneapolis/St. Paul metropolitan area no later than six (6) months after a finding by the city that such interconnection is in the public interest and consistent with applicable Minnesota Statutes.~~

~~(h) *Construction cost.* The company has estimated that the cost of the cable television system during the initial build period years will be thirty million dollars (\$30,000,000.00).~~

~~(i) *Completion of MCDA residential multiple-dwelling units.* The city shall use its good faith efforts to negotiate and execute bulk monthly service contracts with the company for multiple dwelling units owned by the Minneapolis Community Development Agency ("MCDA"). The MCDA shall provide reasonable access to its residential facilities and their occupants for maintenance, marketing, installation, and door-to-door sales by the company. The company shall construct and offer service pursuant to Article II, [section] 3(d) to MCDA residential multiple dwelling units which have executed wiring agreements with the company.~~

Section 4. Company services. The company shall provide at least the following services:

~~(a) *Standard installation.* Standard installation consisting of an aerial drop, not exceeding one hundred fifty (150) feet, from a single pole attachment to the customer's residence. Drops in excess of one hundred fifty (150) feet, concealed wiring, and all underground drops shall be charged according to the rate ordinance. An underground drop of not more than one hundred and fifty (150) feet shall be a standard installation only in the event that all utilities are underground.~~

~~(b) *Project prewiring.*~~

~~(1) The company shall provide service to prewired projects according to the terms and conditions and at such rates provided in the rate ordinance.~~

~~(2) The company shall review and approve methods and materials, supply specifications, technical assistance, and material according to the rate ordinance.~~

~~(3) The company shall prewire a project upon request according to rate ordinance.~~

~~(c) *Deposits.* The company may require a deposit for equipment, materials and services according to the rate ordinance.~~

~~(d) *Additional outlets.* The company shall provide additional outlets as customers may request according to the rate ordinance.~~

~~(e) *Buildings of public, private and parochial schools and colleges and local governmental units.* The company shall provide installation and service to buildings of public, private and parochial schools and colleges; and local governmental units according to the rate ordinance.~~

- ~~(f) *Transfers.* When a current customer moves from one address within the franchised area to a second address within the franchised area and there is no lapse in service, the company shall transfer service at a rate according to the rate ordinance.~~
- ~~(g) *Reconnection.* The company shall restore service to customers wishing restoration of service provided the customer shall first satisfy any previous obligations owed and after the customer makes payment of the reconnection charge and the customer pays a deposit, if one is required, in accordance with the rate ordinance.~~
- ~~(h) *Relocation or extension of cable.* When a current customer requests that an extension or relocation of said customer's cable service be made, the company shall do so according to the rate ordinance.~~
- ~~(i) *Service calls.* The company shall provide cable communication test and repair services to customer's premises pursuant to the rate ordinance.~~

~~**Section 5. Construction and technical standards.** (a) *Compliance with construction and technical standards.* The company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC board regulations, and detailed standards submitted by company. In addition, the company shall provide the city, upon request, with a written report of the results of the company's annual proof of performance tests conducted pursuant to FCC standards and requirements.~~

~~(b) *Additional specifications.* Construction, installation and maintenance of the city's cable communications system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.~~

~~Company shall at all times comply with:~~

- ~~(1) National Electrical Safety Code as prepared by the Institute of Electrical and Electronics Engineers;~~
- ~~(2) National Electrical Code of the National Fire Protection Association;~~
- ~~(3) Bell Telephone System's Code of Pole Line Construction, also known as Bell System Manual of Construction Procedures; and~~
- ~~(4) Other applicable federal, state and local zoning regulations.~~

~~In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the company may have equipment located.~~

~~Any antenna structure used in the cable communications system shall comply with~~

~~construction, marking and lighting of antenna structure, required by the United States Department of Transportation.~~

~~All working facilities and conditions used during construction, installation and maintenance of the cable communications system shall comply with the standards of the Occupational Safety and Health Administration.~~

~~Leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC Rules and Regulations shall govern.~~

~~The company shall provide standby power generating capacity at the cable communications system control center and at all hubs in its area. Company shall maintain standby power system supplies, rated at least at four (4) hours' duration, throughout the distribution networks.~~

~~Company shall provide the system capability which will permit the city or civil defense authorities to transmit an emergency alert signal to all participating subscribers. Company shall also provide an emergency audio override capability to permit city to interrupt and cablecast an audio message on all channels simultaneously in the event of disaster or public emergency. This capability shall be fully operational at the initial activation date of the cable system. Company shall designate a channel which will be used for emergency broadcasts of both audio and video. Company shall also provide emergency text captioning, on at least five (5) channels on each cable, or to the extent technically feasible. The company shall cooperate with the city in the use, operation of and testing of the emergency alert override system.~~

~~(c) *State-of-the-art system.* Pursuant to Addendum A, section 1, which requires the company to provide a state-of-the-art cable system in its area and franchise ordinance, the city shall have the right, prior to commencement of construction of the system, to determine whether the state-of-the-art has changed and, at its discretion, to require such changes be incorporated into the offering and the franchise ordinance where technologically and economically feasible. Failure by the company to begin or complete a state-of-the-art cable system as may be determined by the city shall be grounds for termination and forfeiture pursuant to the due process provisions of Article III, section 14.~~

~~(d) *Applicable technical standards.* The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart R (Technical Standards), shall apply. However, because of the recent development of interactive and other innovative services, modifications of FCC standards, as presented in the specifications below, are considered necessary to meet system service objectives.~~

~~(1) *Forward signals; Class I channels.* The cable system shall have a technical capacity of four hundred forty (440) MHz. The combined forward trunk and distribution system shall deliver signals to each subscriber's TV receiver that will meet or exceed the following specifications at the mean system temperature plus or minus seventy (70) degrees Fahrenheit. This shall include the effects of drop cables, interior splits, and any terminal equipment~~

~~such as descramblers and set-top converters.~~

~~a. Carrier-to-noise ratio: 44 dB~~

~~b. Carrier-to-synchronous-cross-modulation ratio: 56 dB~~

~~c. Carrier-to-second-order-beat ratio: 66 dB~~

~~d. Carrier-to-composite triple beat: 53 dB~~

~~e. Envelope delay: 150 ns maximum~~

~~f. Hum modulation: 45 dB~~

~~g. Ghosts and echoes: 40 dB~~

~~h. Subscriber visual signal level at subscriber terminal: 0 dB MV~~

~~i. Channel frequency response: ± 1.5 dB~~

~~j. Adjacent channel level variation: 2 dB~~

~~(2) Reverse signals. The reverse channels shall have the capability of providing return signals from any subscriber tap to the extreme end of any geographic area without noticeable signal degradation or interference.~~

~~a. The system capability shall include transmission of color video, black and white video, and both low and high speed data, whether analog or digital.~~

~~b. If necessary to prevent the build-up of noise and distortion products, the area shall be divided into sections, and subtrunks run to central hub within the area. Equivalent alternatives such as addressable taps or switches may be utilized.~~

~~(3) No more than +54 dBmV output level shall be required out of any customer interface device to meet the system specifications.~~

~~(4) Where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward transmission.~~

~~(5) For Class I signals, the signal delivered to the subscriber's TV receiver, after being transmitted to the headend, processed and retransmitted down a forward channel, shall meet the specifications of subsection (a) above.~~

~~(e) Performance testing. Company shall perform all tests necessary to determine compliance with the technical standards of FCC 76.601.~~

~~(1) Tests shall include the following, as a minimum:~~

~~Preconstruction,~~

~~Initial proof of performance,~~

~~Annual compliance tests,~~

~~Tests in response to subscriber complaints,~~

~~Monthly monitor.~~

~~Written records of test results shall be maintained, and shall be available for city inspection upon request.~~

~~(2) The tests for the cable system shall be performed periodically, at intervals of no greater than every six (6) months, a minimum of twenty (20) subscriber television receivers, located throughout the service area. At least eight (8) of these locations shall be at the far end of the distribution trunk cables. The tests shall be witnessed by representatives of the city, and written test reports shall be submitted to the city. If more than ten (10) per cent of the locations tested fail to meet the performance standards, the company shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated for at least twenty (20) different locations. If a second test results in failure of more than ten (10) per cent, the city may at its sole option reduce affected subscriber rates by an amount reasonably related to the degraded service, unless the circumstances of the failure are caused by conditions which are beyond the company's reasonable control or which are not reasonably foreseeable.~~

~~**Section 6. System construction standards.** (a) *Authorization to commence construction.* Within ninety (90) days of the granting of the franchise, the company shall apply for all necessary governmental permits, licenses, certificates and authorizations.~~

~~Permission by the company for commencement of construction of the cable communications system authorized herein is granted herewith, after the company has given the department of inspections, the cable communications officer and the city engineer reasonable written notice of the proposed construction thereof, so as to coordinate all work between city and company. Construction may commence subject to the approval of the department of inspections and the city engineer.~~

~~Neither the review of plans by the city nor the granting of any licenses, permits, certificates, authorizations, approvals, etc., shall be construed as a guarantee or warranty by the city of company's communications system. The company shall not assert the fact that the city has performed any prior review of its plans or exercised any ministerial function in granting permits, licenses, certificates, authorizations, approvals, etc., as a defense against its obligations to indemnify and hold the city harmless pursuant to Article I, section 19.~~

~~The city engineer and the department of inspections shall have the right to request that the company shall furnish all plans, drawings and technical data in sufficient detail so as to enable each city department to fulfill its obligations under this franchise and~~

other applicable laws and regulations.

~~(b) *Power to contract.* Upon grant of this franchise to construct and maintain a cable communications system in the city, the company may enter into contracts with any public utility companies or any other owner or lessee of any poles located within or out of the city to whatever extent such contract or contracts may be expedient and of advantage to company for use of poles and posts necessary for proper installation of the system, obtained right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the company's receiving antennas, obtain permission from Federal Aviation Administration to erect and maintain antennas suitable to the needs of the system and its subscribers, and obtain whatever other permits a city, county, state or federal agency may require. In the construction, installation and maintenance of its system, company will use steel, cable, materials and electronic devices, all of specialized and advanced design and type. In the construction and operation of its system, the company will employ personnel and subcontractors with training, skill and experience in electronics and communications. It shall not be deemed a breach of this provision or of this franchise if the company shows that material or personnel are not available to the company due to war or similar official national emergency, or if the company receives the consent of the city council.~~

~~(c) *Interference with persons and improvements.* The company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the city may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.~~

~~(d) *Minimum interference with public ways.* All transmission and distribution structures, lines and equipment erected by the company within the city shall be located so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places.~~

~~(e) *Restoration to prior condition.* In case of any disturbance of pavement, sidewalk, driveway, foundation or other surfacing, the company shall, at its own cost and expense and in a manner approved by the city, replace and restore all paving, sidewalk, driveway, foundation or surface of any street or alley disturbed, in as good condition as before said work was commenced and in accordance with standards for such work set by the city engineer. If the company fails to promptly restore any street or public place in accordance with this provision, the city shall have the right to put such street or public place back into good condition at the expense of the company and the company shall, upon demand, pay to the city the cost of such work done or performed by the city, together with an additional sum as liquidated damages to be determined by the city.~~

~~(f) *Relocation of the facilities.* Whenever the city shall, during the period of this franchise, undertake any public improvement or authorize any project or action for a public purpose, which affects cable communications equipment, it shall direct the company to remove or relocate its wires, conduits, cables, vaults, pedestals, manholes, poles, and improvement, project or action for a public purpose at the company's~~

expense, upon reasonable notice to the company of the undertaking of such public improvement, project or action for a public purpose by the city.

In addition, the company is put on notice of and accepts the provisions of section 99.850 of the Minneapolis Code of Ordinances governing the placement of overhead distribution lines underground and agrees that for the purposes of placing overhead distribution lines underground, section 99.850 will apply to the company.

~~(g) *Interference with utilities.* The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone facilities or obstruct or hinder in any manner the various utilities serving the residents of the city. All such poles or other fixtures placed in any street shall be placed close to the line of the lot abutting on said alley, and then in such manner as not to interfere with the usual travel on said streets, alleys and public ways.~~

~~(h) *Easements.* All necessary easements over and under private property shall be arranged for by the subscribers or the company.~~

~~(i) *Maps and records.* The city shall have the right to inspect and examine at any reasonable time and upon reasonable notice, the property owned or used, in part or in whole, by the company. The company shall keep accurate maps and records of all of its facilities and make available such maps and records as requested by the city pursuant to the provisions of Article II, section 13. In addition, the company shall keep current records and plats on all underground facilities they own or operate. Such plats and records are to be available to all utilities and the city immediately upon request.~~

Section 7. System maintenance standards. ~~(a) Cooperation with building movers. The company shall, on the request of any person holding a building mover permit, issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, rising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.~~

~~(b) *Tree trimming.* The company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the city. The city shall have the right to do the trimming requested by the company at the cost of the company. Regardless of who performs the work requested by the company, the company shall be responsible, shall defend and hold the city harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.~~

~~(c) *Maintenance of system.* The company shall erect and maintain all parts of its system in good condition throughout the entire franchise period.~~

~~(d) *Efficient service and repairs.* The company shall render efficient service, make repairs and adjustments promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use. All costs incurred in making such repairs and adjustments shall be borne by the company except as~~

otherwise provided for in this ordinance.

~~(e) *Interference with reception.* The company shall not allow its cable or other operations to interfere with broadcast reception of persons not served by the company.~~

~~**Section 8. Continuity of service mandatory.** (a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the company are honored. In the event that the company elects to overbuild, rebuild, modify, or sell the system, the company shall undertake all reasonable efforts to ensure that all subscribers receive continuous, high quality, uninterrupted service regardless of the circumstances.~~

~~In the event of a change of franchisee, or in the event a new operator acquires the system, the company shall cooperate with the city, new franchisees or operator in maintaining continuity of service to all subscribers. During such period, company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.~~

~~(b) Six (6) months' notice shall be given by either party of an intent to discontinue all or any part of the operation of the system upon expiration of this franchise, and if such notice is not given at least six (6) months prior to such expiration date, the franchise shall be deemed to be extended for six (6) months and thereafter for another six (6) months' period (but not to exceed a total of twelve (12) months). The company agrees that upon final termination of this franchise or any extension thereof, the city shall have the right to continue operation of the system for a period not to exceed twenty-four (24) months. If prior to the end of such period in which the city is exercising the right to continue operation of the system, the city has initiated proceedings to acquire the system, then such period shall be extended for such further time as may be required to complete acquisition. The city may designate an operator or assure operation itself for such purpose and shall collect the revenues from such operation, shall pay the costs of such operation, and shall pay to the company fair compensation for the temporary use of the system after the franchise has expired.~~

~~**Section 9. Complaint procedure.** (a) During the term of this franchise, and any renewal thereof, the company shall maintain within the city a local business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billing disputes, and similar matters in this area. The office must be reachable by a local, toll-free telephone call, and provide the city with the name, address and telephone number of a person who will act as the company's agent to receive complaints regarding quality of service, equipment malfunctions, billings, and similar matters. The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Company shall provide the means to accept telephone complaint calls in person twenty-four (24) hours a day, seven (7) days a week. Any service complaints from subscribers shall be investigated and acted upon within twenty-four (24) hours. Any service complaint shall be resolved within three (3) calendar days. Upon notification by a subscriber, the company shall credit a subscriber's account on a pro rata basis for loss of service exceeding forty-eight (48) continuous hours within a thirty-day period. An accurate and comprehensive file shall be kept by the company of any and all complaints regarding the cable system. A procedure~~

~~shall be established by the company by the time of installation of the cable system to remedy complaints quickly and reasonably to the satisfaction of the city. Complete records of the company's actions in response to all complaints shall be kept. These files and records shall remain open to the public during normal business hours.~~

~~(b) A summary of complaints, identifying the number and nature of complaints and their disposition, in a form approved by the city, shall be completed for each month and submitted to the city by the tenth day of the succeeding month.~~

~~(c) An annual opinion survey report which identifies satisfaction or dissatisfaction among subscribers with cable communications services offered by the company shall be submitted to the city on or before March 31 of each year. The surveys required to make said report shall be conducted in conformity with such requirements, including supervision, as the city may prescribe.~~

~~(d) As subscribers are connected or reconnected to the system, the company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the city office responsible for administration of the franchise with the address and telephone number of the office.~~

~~(e) "Complaints" for purposes of this section do not include individual requests for service arising from partial systemwide malfunction; requests for service where no in-home visit is required; connection, disconnection, or reconnection requests; changes in services or programming received; or similar requests which do not relate to the quality of present service, equipment malfunction, or billing disputes between customer(s) and the company.~~

~~**Section 10. Company rules and regulations.** The company 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 the company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. Any rules or regulations promulgated pursuant to this section shall be published at the company's expense and be readily available to subscriber.~~

~~**Section 11. Payment of fees and penalties.** (a) The franchise fee and any other cost or penalties assessed shall be payable except as otherwise specified in this franchise agreement, quarterly, to the city finance officer's office and the company shall file a complete and accurate verified statement of all gross receipts within the city during the period for which said quarterly payment is made, and said payment shall be made to the city not later than forty-five (45) days after the expiration of the quarter when due.~~

~~(b) The city shall have the right to inspect the company's income records and the right to audit and to recompute any amounts determined to be payable under this ordinance; provided, however, that such audit shall take place within thirty-six (36)~~

months following the close of each of the company's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within thirty (30) days following written notice to the company by the city which notice shall include a copy of the audit report.

~~(c) In the event that any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the annual rate of twelve (12) per cent.~~

Section 12. Transfer of ownership or control. ~~(a) This franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person, nor shall ownership or control of the controlling general partner be transferred or assigned in any manner without the prior written consent of the city council and in compliance with applicable rules of the Minnesota Cable Communications Board. The proposed assignee must show financial responsibility as determined by the city and must agree to comply with all provisions of the franchise.~~

~~(b) The company shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the company. The word "control" as used herein includes not only major stockholders, general partners and limited partners, but also includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the company shall make the franchise subject to cancellation unless and until the city shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into the qualification of the prospective controlling party, and the company shall assist the city in any such inquiry.~~

~~(c) The consent or approval of the council to any transfer of the company shall not constitute a waiver of release of the rights of the city in and to the streets, and any transfer shall by its terms be expressly subordinate to the terms and conditions of this franchise.~~

~~(d) In the absence of extraordinary circumstances, the city will not approve any transfer or assignment of the franchise prior to substantial completion of construction of the proposed system.~~

~~(e) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to this franchise agreement.~~

~~(f) The hypothecation, pledge or mortgage of both the franchise and its assets by the company as security for debt shall not require city approval. In the event of hypothecation, pledge or mortgage of both the franchise and its assets by company, the company shall provide notice to the city of its action and fully disclose the terms and amounts of any hypothecation, pledge or mortgage to the city's cable officer within fifteen (15) days of any such hypothecation, pledge or mortgage.~~

Section 13. Reports and availability of books and records. ~~(a) Annual report.~~

Within one hundred twenty (120) days following the close of each company fiscal year, during the term of the franchise, the company shall submit a written annual report, in a form approved by the city, including, but not limited to, the following information:

- ~~(1) A summary of the previous year's (or, in the case of the initial reporting year, the initial year's) activities in development of the cable system, including, but not limited to, services begun or discontinued, total number of subscribers, subscribers added or discontinued during the reporting year, and user participation;~~
 - ~~(2) A financial statement including a statement of income, revenues, operating expenses, value of plant, annual capital expenditures, depreciation with an attached depreciation schedule, interest paid, taxes paid, balance sheets, and a statement of sources and application of funds, covering all years since the beginning of the franchise;~~
 - ~~(3) A current statement of costs of construction by component categories;~~
 - ~~(4) A projected income statement, balance sheet, statement of sources and applications of funds, and statement of projected construction for the next two (2) years;~~
 - ~~(5) A reconciliation between previously projected construction and/or financial estimates, as the case may be, and actual results;~~
 - ~~(6) A list of the company's officers, members of its board of directors, and other principals of the company;~~
 - ~~(7) A list of stockholders or other equity investors holding five (5) per cent or more of the voting interest in the company and its parent, subsidiary and affiliated corporations and other entities, if any;~~
 - ~~(8) To the extent that money, other than profits, is paid to a parent, subsidiary, or other person affiliated with the company, the amounts of such payments and the basis for computation of such amounts (e.g., the basis for computing any management fees or share of "home office" overhead);~~
 - ~~(9) The company shall maintain its books and records solely for the information of the city in such detail such that revenues and costs, associated with institutional capacity and services shall be easily identifiable. The company shall provide a clearly stated analysis of the current and periodic to date investment in and results of operations of the institutional network. The company also agrees to make its financial records available to inspection by the city, upon request.~~
- ~~(b) *Annual plant survey report.* Simultaneously with the annual report required by subsection (a), company shall submit to the city an annual plant survey report which shall be a complete survey of the company's plant and a full report thereon. Said report shall include, but not be limited to, an appropriate engineering evaluation including suitable electronic measurements and shall be conducted in conformity with such~~

requirements, including supervision, as the city may prescribe. Said report shall be in sufficient detail to enable the city to ascertain that the technical standards of the FCC and/or the franchise are achieved and maintained. At the city's request, but no more often than once per three (3) years, the company and the city shall agree upon the appointment of a qualified independent engineer to evaluate the technical performance of the cable system. The cost of such evaluation shall be borne by the company.

~~(c) Other petitions and applications.~~ The company shall submit to the city copies of all pleadings, applications, reports, communications and documents of any kinds, submitted by the company to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating to its cable television operations within the franchise area. Company shall submit such documents to the city simultaneously with their submission to such courts, agencies and bodies; and within five (5) days after their receipt from such courts, agencies and bodies. The results of any tests required by the FCC shall be filed within ten (10) days of the conducting of such tests with the Minnesota Cable Communications Board. The company hereby waives any right to claim confidential, privileged or proprietary rights to such documents. However, information otherwise confidential by law and so designated by the company, which is submitted to the city shall be retained in confidence by the city and its authorized agents and shall not be made available for public inspection.

~~(d) A copy of each of company's annual and other periodic public reports, if issued, and those of its parent, subsidiary and affiliated corporations and other entities, if issued, as the city requests and is reasonably appropriate, shall be submitted to the city within five (5) days of grantor's request or upon availability of the report after request.~~

~~(e) The company shall submit to the city copies of all income tax returns and reports which are filed with the local, state or federal governments pertaining to its cable system in the franchise area within five (5) days of the date on which such reports are filed.~~

~~(f) Within one hundred twenty (120) days after the end of each fiscal year of KBLCOM, the company shall submit a written annual report for its guarantor which shall include a consolidated financial statement which includes a statement of income, revenues and expenses, a statement of cash flow and balance sheet and footnotes, thereto, as of and for the period ended with its most recent fiscal year end, in sufficient detail to facilitate reasonable financial analysis of the consolidated financial statements. The consolidated financial statements shall have been certified as to their fair statement in conformity with generally accepted accounting principles, consistently applied, by the guarantor's chief financial officer. This certification shall be accompanied by a letter from the certified public accountants ("CPA") who are currently auditing the books and records of the guarantor's parent company. The letter shall state that, based upon the CPA's reading of the consolidated financial statements presented to the city by the guarantor and the results of the procedures utilized in their audit of the guarantor's parents' consolidated financial statement, that nothing came to their attention that would lead them to believe that the guarantor's certified consolidated financial statements were not prepared in accordance with general accounting principles, consistently applied. The guarantor shall provide such additional detail of the consolidated financial statements and other financial and operating data as may be reasonably required and necessary to facilitate financial analysis.~~

~~(g) Company shall submit to the city such other information or reports in such forms and at such times as the city may request or require.~~

~~(h) The company shall allow the city to make inspections of any of the company's facilities and equipment at any time upon one day's prior notice, or, in case of emergency, upon demand without prior notice.~~

~~(i) The company shall maintain an office within the franchise area and shall produce upon reasonable notice complete and accurate books and records. The city shall have the right to inspect at any time upon reasonable notice during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the company which relate to the operation of the cable system, provided where volume and convenience necessitate, company may require inspection to take place on company premises. Access to the aforementioned records shall not be denied by the company on the basis that said records contain confidential, privileged, or proprietary information except that grantee shall not be required to disclose any information regarding projects undertaken strictly for research and development.~~

~~All reports required under this section, except as otherwise herein provided, shall be available for public inspection in the city clerk's office during normal business hours. Company, KBL and KBLCOM recognize that certain information submitted is open to public inspection and subject to the Minnesota Government Data Practices Act, M.S. Sec. 13.01, et seq. Company, KBL and KBLCOM are responsible for familiarizing themselves with this law. Certain data is protected from disclosure under this law, such as security information, trade secret information and labor relations information. Company, KBL and KBLCOM understand and agree that in the event that the city receives a request from another party to disclose any information which the company, KBL and KBLCOM deem to be protected under the Minnesota Government Data Practices Act, the city will tender to company, KBL and KBLCOM the defense of any request to compel disclosure. By submitting information that company, KBL and KBLCOM deem exempt from disclosure, company, KBL and KBLCOM agree to defend and hold harmless the city from any claim for disclosure, including but not limited to the city's expenses, including out-of-pocket costs and attorney's fees incurred by the city, as well as any judgment entered against the city for any damages or for the attorney fees or costs and disbursements of the party requesting disclosure from the city.~~

~~(j) All reports required under this section, except as otherwise herein provided, shall be available for public inspection in the city clerk's office during normal business hours.~~

~~(k) The refusal, failure, or neglect of the company to file any of the reports required under this section, or as the city may direct, shall be deemed a material breach of the franchise, and shall subject the company to all penalties and remedies, legal or equitable, which are available to the city under the franchise or otherwise, pursuant to the due process provisions of Article III, section 14.~~

~~(l) Any materially false or misleading statement or representation made knowingly by the company in any report required under the franchise shall be deemed a material breach of the franchise and shall subject the company to all penalties and remedies, legal or equitable, which are available to the city under the franchise or otherwise,~~

pursuant to the due process provisions of Article III, section 14.

(m) All reports and records required under this or any other section shall be furnished at the sole expense of the company.

(n) The company shall retain the services of a marketing consultant at its own expense to review and comment upon the marketing plan dated April 18, 1986, as submitted to the city. A copy of the consultant's report shall be submitted to the city no later than October 1, 1986. Commencing on January 1, 1987, the company shall submit marketing status reports to the city on a quarterly basis in the form prescribed by the cable office. Such quarterly reports shall include, but not be limited to new initiatives of the company.

Section 14. Removal of cable communications system. At the expiration of the term for which this franchise is granted unless such franchise is renewed, or upon its termination as provided herein, company shall forthwith, upon notice by the city, remove, at its own expense, all designated portions of the cable communications system from all highways, streets, sidewalks, easements, dedications and public property within the city. If the company fails to do so, the city may perform the work at the company's expense. A bond or bonds placed with a company licensed to do business in the State of Minnesota in the total amount of five hundred thousand dollars (\$500,000.00) shall be furnished to cover this expense; said bond to be approved by the city attorney. Said bond may be incorporated, at the company's option, as part of the bonds required of the company in Article I, section 17. However, nothing contained in Article I, section 17, shall be construed as reducing or waiving the requirement of the company to maintain coverage of five hundred thousand dollars (\$500,000.00) under this provision.

The bond required under this provision shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled until sixty (60) days after receipt by the city attorney, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew. This bond shall not be subject to cancellation by the surety while the company is in default."

Section 15. Abandonment of service. Notwithstanding the provisions of this franchise, the company shall not abandon any cable communications service or any portion thereof without having given three (3) months' prior written notice to the city and the Minnesota Cable Communications Board. The company shall not abandon any cable communications service or any portions thereof without compensating the city for damages resulting to it from such abandonment. For purposes of this section, "service" shall mean the aggregate cable communications system.

ARTICLE III. ADMINISTRATION AND REGULATION

Section 1. Rules and regulations. (a) In addition to the inherent powers of the city to regulate and control this franchise, and those powers expressly reserved by the city, or agreed to and provided for herein, the right and power is hereby reserved by the city to promulgate such additional reasonable regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this

franchise.

~~(b) The city may also adopt such regulations at the request of company upon application to the city.~~

~~(c) Any rules or regulations adopted pursuant to this section shall be published at company's expense and be readily available to subscribers.~~

~~(d) The city reserves the right to determine how the access channels will be administered.~~

~~**Section 2. Application procedure.** Except as otherwise specifically provided for herein, following the adoption and acceptance of this franchise, all applications by the company effectuating a change in this ordinance, including but not limited to changes in rates, services, programming of activated and nonactivated channels, construction schedules, transfer of ownership, proposed changes in regulations or ordinances, importation of distant broadcast signals, etc., and as otherwise authorized by or made pursuant to this franchise, shall be made and processed by giving notice to the city in accordance with the following procedure:~~

~~(a) Applications shall be in a form prescribed by the city and shall contain sufficient facts and information acceptable to the city.~~

~~(b) An application may be rejected for inadequacy by the city if it contains an inadequate description of what is being applied for, is not in an acceptable form, or contains insufficient facts and information for adequate consideration.~~

~~(c) A rejection of an application for inadequacy shall be in writing by notice which shall state the deficiencies. The notice shall not be construed to limit rejection for further and different deficiencies on subsequent applications.~~

~~(d) Upon acceptance, city staff shall review the application. The staff may submit the application to council if it deems the application adequate and complete and in need of no further staff study or report. The city shall give notice to company within thirty (30) days of acceptance if it will study the application prior to submission to council. The study shall be completed within forty-five (45) days after notice is given to the company by the city unless such period is extended for up to an additional forty-five (45) days by motion of council or a longer period of time by agreement with company.~~

~~At the conclusion of the study, city staff may submit the application, study and other information, documents and exhibits to the council for consideration.~~

~~At the expiration of the study period, if the matter has not been placed upon the council agenda, company may notify the city clerk in writing to place the application upon the council agenda for the next regular meeting, and the city clerk shall do so.~~

~~(e) During the study period, company shall fully cooperate with the city in providing information and documents which are related to and reasonably necessary in the~~

~~proper evaluation of the application. Failure of company to so cooperate or company's unreasonable delay in providing information and documents shall be grounds for a reasonable extension by council of the study period or, if either the lack of cooperation or the delay substantially impairs the study, council may summarily deny the application.~~

~~(f) Upon submission to council, it shall review the application and any studies, information and documents which accompany it. Council shall approve or deny the applications based on the record within thirty (30) days, unless a public hearing is set. If council desires a public hearing, or if one is required, council shall set a public hearing within thirty (30) days. Notice of the public hearing shall be given in accordance with Article I, section 22.~~

~~(g) At a public hearing pursuant to this application process, council may hear reports from staff, citizens' advisory committee, consultants and the public. Council shall provide a reasonable but not unlimited opportunity for rebuttal. Council may impose reasonable time limitations on verbal presentations which may be selectively waived to facilitate adequate evaluation of the application.~~

~~(h) If, at the hearing, council determines that additional information or documents are necessary to adequately evaluate the application, it may continue the hearing from time to time pending augmentation of the record. A continuance shall not exceed fifteen (15) days at a time.~~

~~(i) At the close of the hearing council shall, within thirty (30) days, approve, deny or modify the application. Notice of denial and the grounds therefor may be in writing if requested. Reasonable conditions in furtherance of the purpose and intent of the franchise may be attached by council to an approval or modification and may be acted upon by company upon acceptance in writing by company.~~

~~(j) Any time limit may be waived by consent of both council and company.~~

~~(k) Nothing contained herein or within this ordinance shall be construed as limiting the right of the city to require that an application be filed by the company whenever the council reasonably determines that the company is undertaking any change in this ordinance which negatively affects subscriber services.~~

Section 3. Annual review of system performance. ~~(a) On or about June 1, 1984, and each year thereafter throughout the term of the franchise, the city and company shall meet publicly to review the performance and quality of service of the company's cable television system pursuant to this ordinance and federal and state cable television regulations. The reports required in Article II, section 9 regarding subscriber complaints, the records of performance tests and the opinion survey report shall also be utilized in the review. In addition, any subscriber may submit complaints during the review meetings, either orally or in writing, and these shall be considered.~~

~~(b) Within thirty (30) days after the conclusion of the system performance review meetings, city shall issue findings with respect to the adequacy of system performance and quality of service. If violations of the ordinance or federal, state or local regulations are found, city may direct company to correct the violations within a reasonable period of~~

time.

~~(c) Failure of company, after due notice, to correct the violations shall be considered a material breach of the franchise, and city may, pursuant to the due process provisions set forth in Article III, section 14, levy any reasonable penalty within the scope of Article III, section 13 which is appropriate.~~

Section 4. System and services review. ~~(a) Review. To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced, modern system for the city, the city and the company shall comply with the following system and services review provisions:~~

- ~~(1) The city may hold a system and services review session on or about September 1, 1985. Subsequent system review [shall be] by the city each three (3) years thereafter. All such review sessions shall be open to the public, and notice given in accordance with Article I, section 22.~~
- ~~(2) Sixty (60) days prior to the scheduled system and service review session the company shall submit a report to city indicating the following:
 - ~~a. All cable system services that are being provided by the company on an operational basis, excluding tests and demonstrations, to cities in the United States with populations above two hundred fifty thousand (250,000), that are not provided to the city.~~
 - ~~b. A plan for provision of such services, or a justification indicating why such services are not feasible for the city.~~~~
- ~~(3) Topics for discussion and review at the review sessions shall include but shall not be limited to, services provided, rate structure, free or discounted services, application of new technologies, system performance, need for additional institutional capacity, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints.~~
- ~~(4) Either the city or the company may select additional topics for discussion at any review session.~~

~~(b) Findings. Not later than sixty (60) days after the conclusion of each system and services review session the city shall issue findings, including specifically a listing of any cable services not then being provided by the company to the city that are considered feasible. The city may direct the company to provide such services within a reasonable time and under reasonable rates and conditions if it is technologically and economically feasible to do so. Failure to provide such directed services may be considered a breach of the franchise, subject to penalties as provided in Article III, section 13, and subject to the due process provisions set forth in Article III, section 14.~~

Section 4.5. Reserved.

Section 5. Rate and fee setting. ~~(a) Following the adoption of this franchise, city shall adopt by ordinance a rate for the franchise fee and approve a schedule for maximum rates for services which company may charge.~~

~~(b) City may regulate all cable system rates when not prohibited by applicable law.~~

~~(c) An application for an increase in the schedule of rates shall be filed in accordance with procedures established in Article III, section 2. The application shall be supported by statistical and other proof indicating that the existing rate is inadequate and unreasonable and that the proposed increases therein are required to enable the company to render service to fulfill its obligations under this ordinance and to derive a reasonable profit therefrom.~~

~~The company's petition for a rate increase shall include the following financial reports which shall reflect the operations of this franchise area system only:~~

~~(1) Balance sheet;~~

~~(2) Income statement;~~

~~(3) Statement of sources and applications of funds;~~

~~(4) Detailed supporting schedules of expenses, income, assets, and other items as may be required; and~~

~~(5) Statement of current and projected subscribers and penetration.~~

~~The company's accounting records applicable to the company's cable system shall be available for inspection by the city at all reasonable times. The city and its agents shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the Minneapolis operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the city with the information needed to make accurate determinations as to the financial condition of the system. All financial statements shall be certified as accurate by an officer of the company.~~

~~(d) The city may consider all relevant factors including but not limited to the following in determining whether to approve, modify or disapprove company's requests for rate increases during the terms of this franchise:~~

~~(1) Company's substantial fulfillment of all material requirements of the franchise.~~

~~(2) Quality of service, as indicated by the number and type of service complaints, company's response to complaints, and the results of periodic system performance tests.~~

~~(3) Prevailing rates for comparable services in other cable systems of similar size and complexity.~~

- ~~(4) Rate of return as compared to businesses of equivalent risk. The rate of return shall be calculated on a cumulative basis for all system revenues and costs including services such as pay television that may be exempt from local rate regulation. Upon request of city, company shall promptly provide, from the company, its parent company and any subsidiary company, all information as shall be reasonably necessary to determine system revenues and costs.~~
- ~~(5) Performance and capital expenditures by company in introducing new services and expanding the cable system's capability, as compared to other systems of similar size and complexity.~~
- ~~(6) The original cost of the system less depreciation determined on a straight line actual life basis.~~
- ~~(7) Rates currently fixed in other cable television franchises for comparable service areas.~~

~~(e) Change in rates. Changes in rates for any service regulated by the city shall be granted to the company no more often than each two (2) years. The city may require the company to apply for a rate review at any time. Upon receipt of a rate increase request, city shall schedule a public hearing prior to arriving at a decision. City may request relevant financial and other information necessary to determine the justification for the requested increase. Notwithstanding any provision of this ordinance to the contrary, within one hundred twenty (120) days after receipt of the rate increase request, city, as expressed by city council resolution, shall approve the request in full, approve the request in part, modify, or disapprove the request. In any event, city shall provide findings as to the basis for its decision. If no city action has occurred within one hundred twenty (120) days after receipt of the rate increase request, the request shall be deemed to have been approved.~~

~~(f) Notwithstanding any provision in this ordinance to the contrary, the company may after completion of the rate guarantee period set forth in the rate ordinance, make an application to increase regulated rates by the annual increase in the Consumer Price Index made for the Minneapolis metropolitan area, or an annual five (5) per cent, whichever is less. Such application to increase regulated rates must designate which rates the company wishes increased and must be accompanied by the same supporting documentation as set out for rate increases in Article III, section 5(c). Any rate increases applied for under this provision must be applied for in the year in which it is to be effective and increases based on the Consumer Price Index or five (5) per cent must not be cumulative or retroactive. In the event the Consumer Price Index for the Minneapolis metropolitan area, as compiled by the United States Department of Labor, Bureau of Labor Statistics, is no longer available, then another similar, generally recognized index may be substituted on approval of the city council.~~

~~(g) Upon receipt of a request for increases in rates under this section, the city shall have thirty (30) days within which to determine whether it wishes to review more fully the request for increases in accordance with the procedures for rate studies and hearings set out in Article III, section 5, of this ordinance. In the event that the council takes no action within thirty (30) days, said rates shall become effective.~~

~~(h) Changes in rates taking place with or without council action shall supersede the rates set out in this ordinance after their effective date. The city clerk shall prominently post a detailed listing of current rates and the company shall inform all subscribers of the new rates in writing.~~

~~(i) Nothing herein or within this ordinance shall limit the authority of the city to regulate any rate when such regulation is not specifically prohibited or preempted by federal or state law or regulation.~~

Section 6. Supervision of the franchise. ~~(a) The city council shall designate a person to serve as cable communications officer.~~

~~(b) The cable communications officer shall perform such duties and have such responsibilities as are specified by resolution of the city council or by this ordinance. Such duties and responsibilities may include, but shall not be limited to, the following:~~

- ~~(1) Serve as liaison between the city, the Minneapolis Citizens' Advisory Committee on Cable Communications and the company;~~
- ~~(2) Monitor company's adherence to construction and installation schedule and line extension policy;~~
- ~~(3) Assure compliance of applicable laws and ordinances;~~
- ~~(4) Monitor operational standards as contained in this ordinance;~~
- ~~(5) At the council's direction, arrange tests and analysis of equipment and performance;~~
- ~~(6) Monitor road and traffic disruptions for construction and repair purposes;~~
- ~~(7) Assure continuity in service;~~
- ~~(8) Receive, examine and recommend action on the monthly log of citizen complaints;~~
- ~~(9) Assist in evaluating uses of access channels;~~
- ~~(10) Prepare an annual report to council;~~
- ~~(11) Receive for examination all data and reports required by this ordinance, and, where appropriate, forward said data to the various interested or affected city departments;~~
- ~~(12) Make recommendations to council regarding fines for violations of this ordinance;~~
- ~~(13) Bring to the attention of the city attorney any situation where potential recourse may be sought from the letter of credit in accordance with Article I,~~

~~section 16;~~

- ~~(14) Monitor regulatory and legislative actions at the state and federal level;~~
- ~~(15) Request information from the company on behalf of the various city departments;~~
- ~~(16) Monitor, evaluate, report to council and approve minor changes in equipment or design that deviate from company's "offering" to ensure that substituted equipment or design is equal to or better than that specified by company in its "offering."~~

~~(c) The cable communications officer shall from time to time set a schedule of penalties which may be assessed against the company pursuant to Article III, sections 13, 14. The company may appeal the setting of such schedule to the city council whose determination shall be final and binding upon the city.~~

~~**Section 7. Minneapolis Citizens' Advisory Committee on Cable Communications.** There may be established a citizens' advisory committee having the duties and responsibilities which the council may from time to time assign to it.~~

~~**Section 8. Public usage of the cable system.** (a) The city shall utilize a portion of the cable system to provide and develop cable services that will be in the public interest. The city shall establish a public nonprofit corporation to be known as the Minneapolis Telecommunications Network, Inc. ("MTN"), to receive and allocate support funds and other considerations provided by the company, and/or others in furtherance of this purpose. The MTN's responsibilities under the ordinance, including sections 8 and 9, shall be in lieu of any obligation on the part of the company to develop and provide cable service in the public interest except as specified elsewhere in the ordinance. Any obligation by the company to provide public interest and/or public service programming shall be created by a contract between the city and the company or the MTN and the company.~~

~~It shall be the purpose of MTN to administer the channel capacity provided to it by the city and to provide programming and services which are in the public interest or constitute a public service. The responsibility of MTN to provide public interest programming grows from the responsibility of the company to make channel capacity available to governmental, educational, leased and public access pursuant to prior FCC regulation, and present Minnesota Statutes and MCCB rules and to promote, support, and develop programming and services created by local residents, groups, institutions, businesses and governments. Company has delegated this responsibility to the city. It shall be the primary responsibility of MTN to provide public interest programming. MTN shall not compete against the company in offering services except as otherwise set forth herein since such competition would not only be inconsistent with the purpose of MTN as set forth by its articles of incorporation, but would also be inherently unfair since MTN experiences none of the operating costs (such as debt retirement, repair and upkeep of the system, etc.) facing the company.~~

~~The company agrees to cooperate with MTN and the city to assist it in providing access and local origination programming of the highest quality. The company also~~

~~agrees to provide public interest and/or public service programming under the terms of any contract between the city and the company or between the MTN and the company. No contract or agreement entered into between the company and the city or between the company and MTN shall limit the right of MTN to provide access or local origination programming.~~

~~(b) For the purpose of this section, the following terms shall be defined as follows:~~

~~(1) "Premium service" shall mean any service for which a charge is imposed above the monthly charge for basic cable service.~~

~~(2) "Program or service generally available to cable operators" shall mean a program or service commercially produced by a third party and nationally or regionally distributed, regardless of the method of distribution, to cable systems, other telecommunications delivery systems or for other methods of public presentation.~~

~~(3) "Nonprogram service of a type generally available to cable operators" shall mean a nonprogram service commercially provided by a third party which is either distributed or provided nationally or regionally or is substantially similar to a nonprogram service which is distributed or provided nationally or regionally and which is available to cable systems, or other telecommunications delivery system.~~

~~(c) The MTN shall have the right to carry: Programs or services generally available to cable operators; nonprogram services of a type generally available to cable operators; and premium services under the following conditions:~~

~~(1) Prior to offering such a program or service, or such a nonprogram service, the MTN shall, in writing, indicate its interest to the company. The company shall have ninety (90) days from the receipt of such notification from MTN to offer or contract to offer the program or service. In the event that the program or service is not operational at the time the company receives such notification from MTN, the company shall have ninety (90) days from the time that the program or service becomes operational to offer or contract to offer the program or service. In the case of a program which is not part of an ongoing service or series and which is to be shown on a one-time basis, the company shall have thirty (30) days from the receipt of such notification from MTN to offer or contract to offer the program.~~

~~(2) If the company fails to offer or contract to offer such program or service within the time frame established in Article III, section 8(c)(1), MTN may offer such service or program to the affected subscribers via MTN channels subject to any of the following limitations which may apply:~~

~~a. Premium services or premium programs which are generally available to cable operators and nonprogram services of a type which are generally available to cable operators shall not be provided by MTN without prior written consent of the company. Such consent shall not be unreasonably withheld.~~

- ~~b. MTN shall offer only programming and services and nonprogram services that are of a public interest or public service nature.~~
- ~~c. If the program or service is generally available to cable operators, or the nonprogram service is of a type which is generally available to cable operators, the MTN shall discontinue its carriage of such a program or service within ninety (90) days of notification from the company of its intent to offer the program or service. In the event that MTN has entered into a contract to provide such a program, service or nonprogram service and the contract has not expired within ninety (90) days of the notification, the company shall either wait until the expiration of the contract prior to providing the program, service or nonprogram service assuming the responsibilities of MTN under the terms of its contract. However, in no event shall MTN enter into a contract for such a program, service or nonprogram service for a term in excess of one year without prior approval of the company, which approval shall not be unreasonably withheld.~~
- ~~d. If a program or service is not generally available to cable operators (local origination or access), or if the nonprogram service is of a type which is not generally available to cable operators (local origination or access), the company shall have the right to offer the program or service as a joint venture with MTN at any time beginning one year after the introduction of the program or service by MTN. Such a joint venture shall involve an equal sharing of all costs and profits from the date of the agreement, unless otherwise agreed upon by MTN and the company. However, MTN shall not offer professional sports programming involving teams located in the Minneapolis-St. Paul metropolitan area or athletic programming involving extramural teams from the Minneapolis and St. Paul campuses of the University of Minnesota without prior written consent of the company, which consent shall not be unreasonably withheld.~~
- ~~e. If more than thirty-three (33) per cent of the programming on the service in question is already provided on a service or services currently provided by the company, or will be provided on a service or services which the company has agreed to provide pursuant to the conditions of Article III, section 8(c)(1) herein, then the proposed service or programming shall be ineligible for carriage by MTN absent written permission from the company. However, such consent shall not be unreasonably withheld.~~
- ~~f. Under no circumstances shall MTN enter into an agreement to carry a program or service that is generally available to cable operators or a nonprogram service which is of a type generally available to cable operators or to lease channel capacity under terms which are more favorable to a lessee than those contained in similar agreements with major MSO's operating in markets comparable to the City of Minneapolis. Under no circumstances shall MTN provide such a program or service or nonprogram service to subscribers or lease channel capacity at rates which materially differ from those charged for similar services or programs or channel capacity by the company in the City of Minneapolis.~~

~~(3) If MTN should want to offer a program or service on a pay-per-view basis, MTN shall notify the company of its interest at least thirty (30) days before the scheduled presentation of the service or program. The company shall then be given fifteen (15) days to notify MTN as to whether it will offer the program or service. However, the MTN's right to offer said program or service shall be subject to all other procedures and limitations as set forth in section 8(c) above. The company may waive the notices required by this subsection upon timely request by MTN in the event that such program or service becomes available less than thirty (30) days before its scheduled presentation.~~

~~[(d) Reserved.]~~

~~(e) If MTN produces or acquires a program or service which is not generally available to all cable operators (local origination or access) or a nonprogram service which is of a type not generally available to all cable operators (local origination or access), there shall be no prohibition imposed by the company against MTN distributing or otherwise reselling the programming or service or nonprogram service.~~

~~—(f) *Company support of nonprofit corporation.*~~

~~(1) The company shall make available equipment or other capital assets in the amount of one million and five hundred thousand dollars (\$1,500,000.00) to be used in the furtherance of public interest and/or public service programming. A contract between the city and the company or between MTN and company may stipulate that all or some of that equipment and/or capital assets be under the control of the company for the purposes of providing public interest and/or public service programming for a set period of time. Equipment or other capital assets made available shall be provided by the company pursuant to a capital budget and on a schedule to be approved by MTN and the city. The equipment and capital assets provided to MTN shall be provided pursuant to a service agreement to be approved by MTN. Provision of such equipment and other capital assets shall constitute the total responsibility of the company for capital investment in access facilities, studios, and production equipment. Any equipment or assets made available to the company pursuant to an agreement under this section shall be used for public interest and/or public service programming. Any contract for equipment and/or capital assets between the city and the company may delegate to the city the right to hold capital assets in escrow for either MTN or for company equipment replacement and maintenance.~~

~~(2) The company shall pay an amount equal to five (5) per cent of the company's annual gross revenues to the city to provide an operating appropriation in furtherance of public interest and/or public service programming. A contract between the city and the company or between MTN and the company may stipulate that all or some of that amount be retained by the company for the purpose of providing public interest and/or public service programming during any set period of time.~~

~~Such payments shall constitute the total responsibility of the company for~~

~~access and related activities.~~

- ~~(3) The city shall have the right to reallocate a portion of the capital budget to the operating budget and a portion of the operating budget to the capital budget in the furtherance of public interest and/or public service programming.~~
- ~~(4) Company shall dedicate the following system capacity for public use at no cost (except where indicated) throughout the life of the franchise:
 - ~~a. Twenty-five (25) per cent of the downstream and upstream channel capacity of the residential network.~~
 - ~~b. Forty (40) per cent of the downstream and upstream channel capacity of the institutional network.~~
 - ~~c. Fifty (50) per cent of the downstream and upstream channel capacity of any interconnection links to neighboring cable systems and additional channel(s) when these channels are in use eighty (80) per cent of the time between the hours of 8:00 a.m. and 10:00 p.m. during any consecutive six week period.~~
 - ~~d. Access to all satellite down-link programming and services. (Users of programming will be responsible for obtaining any required rights and paying fees for actual use of programming, where applicable.)~~
 - ~~e. Access to existing satellite up-link capacity if established pursuant to Addendum A, under reasonable conditions and fees, and when the city determines that user demand warrants it.~~
 - ~~f. Access to residential interactive data transmission capacity, when and if provided on a city-wide basis, under reasonable conditions and fees not to exceed the actual additional cost to the company.~~~~

~~The city may permit the company to lease, at a nominal charge, any of the channel capacity dedicated to MTN and not being utilized by the MTN. For the purposes of public interest and/or public service programming a contract between the city and the company or between MTN and the company may stipulate that the company program some or all of the channels and capacity described in Article III, section 8(e)(4).~~

~~If the cable system capacity is expanded in the future, the above percentages shall continue to apply.~~

~~The dedicated capacity shall be provided to MTN free of charge (except where indicated) for channel and system equipment usage. The MTN or company through agreement with the city or MTN shall provide the necessary channel capacity to provide for all access channel requirements pursuant to state and federal law and regulation. The city will have the right to lease unused channel capacity to others to provide~~

~~services and/or programs which have been determined to be in the public interest and which neither the company nor MTN are providing. Prior to entering into such a lease, city shall comply with the requirements of subsections (b), (c), (d), and (e) above and offer the company the option to enter into a lease with the prospective lessee under the same terms and conditions.~~

~~The company's personnel shall cooperate with the city, MTN and other local public and nonprofit agencies which produce programming and services suitable to a cable system.~~

~~MTN shall indemnify, keep and save the city and the company free and harmless for claims arising out of MTN's operation and responsibilities under Article III, sections 8 and 9. In the event that suit shall be brought or that recourse or damages sought against either the city or the company, or both, either independently or jointly with MTN, MTN shall indemnify the city and/or the company and pay such judgment with all costs, including reasonable attorneys' fees, and hold the city and/or the company harmless. MTN shall maintain liability insurance with a company licensed to do business in the State of Minnesota, naming the city and the company as additional insured, with regard to all claims or damages set forth above in a minimum amount of:~~

- ~~a. Five hundred thousand dollars (\$500,000.00) for damage to any one person;~~
- ~~b. One million dollars (\$1,000,000.00) for damage in any one accident;~~
- ~~c. One million dollars (\$1,000,000.00) for personal injury to any one person;~~
- ~~d. One million dollars (\$1,000,000.00) for personal injury in any one accident; and~~
- ~~e. Two million dollars (\$2,000,000.00) for damages arising from programming errors or omissions, including copyright infringement, misappropriation of literary property or program format, defamation, or invasion of privacy.~~

~~The insurance policy or policies obtained by the MTN in compliance with this section must be approved and maintained by the city attorney and legal counsel for the company pursuant to the provisions of Article I, section 18(d) through (g).~~

~~(g) Company support of nonprofit corporation after effective date of 86-Or-164.*~~

- ~~(1) After the effective date of 86-Or-164, city agrees that the company's obligations to support public interest/public service programming shall be governed by the terms contained below and that the terms set forth below shall be in lieu of and supersede the company's former obligation to support~~

~~public interest/public service programming, as contained in section 8(f)(1) and (2), above, which was to provide one million five hundred thousand dollars (\$1,500,000.00) for capital assets and to provide five (5) per cent of company's gross revenues for an operating appropriation in furtherance of public service and/or public interest programming. Such payments and capital assets to the city under this section, together with five (5) hours weekly of regional local origination programming provided by the company, shall constitute the total responsibility of the company for access and related activities.~~

- ~~(2) The company shall make available equipment or other capital assets in the aggregate total amount of seven hundred and fifty thousand dollars (\$750,000.00) (excluding sales tax and head-end modulators) to be used in the furtherance of public interest and/or public service programming. No additional capital assets beyond capital assets requested and approved by the city as of June 1, 1986, shall be made available until after January 1, 1988. No more than twenty five thousand dollars (\$25,000.00) shall be made available in any one year from January 1, 1988 through December 31, 1992. The remaining capital assets up to the aggregate total set forth above shall be provided thereafter as replacement assets on a schedule established by the company and the city. Said equipment or other capital assets shall be made available in two (2) equal installments, the first installment to be completed on or before December 31, 1993 and the second installment to be completed on or before December 31, 1994.~~

~~The company shall make available space sufficient to accommodate MTN playback equipment (up to one hundred fifty (150) square feet) in the "Head-End Room," the studio and adjacent office space at 801 Plymouth Avenue North, Minneapolis, Minnesota, for public interest/public service programming, for the term of the franchise, pursuant to a lease with reasonable terms and conditions* which shall include the following:~~

- ~~1. That the cost for usage of the facilities, pursuant to said lease, shall not exceed the out-of-pocket incremental costs to company, such as security, utilities, insurance and structural alterations, arising out of MTN's, or any successors thereto, use of said facilities.~~
- ~~2. That said facilities shall be made available by company to MTN, or any successor thereto, until the expiration of this franchise, unless the city directs otherwise or the MTN defaults on the lease. The lease shall be assigned to the city in the event MTN defaults.~~
- ~~3. Beginning on January 1, 1987, and each year thereafter, the company shall pay:*~~
 - ~~(i) An annual total pursuant to this chapter of sixty two thousand, five hundred dollars (\$62,500.00) to the city for public interest and/or public service programming payable semiannually.~~
 - ~~(ii) When the system obtains fifty thousand (50,000) full cable service tier~~

~~subscribers citywide for three (3) consecutive months, the company shall pay an annual total pursuant to this chapter of eighty-seven thousand five hundred dollars (\$87,500.00) to the city for public interest and/or public service programming semiannually unless the full cable service tier subscriber count declines below fifty thousand (50,000) citywide for three (3) consecutive months. In that event, the payment schedule under subsection (i) above shall govern.~~

~~(iii) In 1991, the company shall pay to the city an annual total pursuant to this section of one hundred six thousand two hundred fifty dollars (\$106,250.00)* for public interest and/or public service programming semiannually. In 1992, the company shall pay to the city an annual total pursuant to this chapter of one hundred and twenty-five thousand dollars (\$125,000.00)* for public interest and/or public service programming semiannually. Said payments shall be made on or before May 15 and November 15 of each calendar year. In each year after 1992 and until the conditions set forth in subsection (iv) below have been met, the company shall increase the amount paid to the city by making an annual cumulative adjustment of one hundred and twenty-five thousand dollars (\$125,000.00) times eighty (80) percent of the consumer price index urban (CPIU) as of December 31 of the previous year or times five (5) percent, whichever is less. In the event the company obtains sufficient subscribers to trigger the provisions of subsection (iv) below, the company shall pay the city the amount specified in subsection (iv) or the cumulative inflation adjusted amount set forth herein, whichever is greater.~~

~~(iv) When the system obtains ninety thousand (90,000) full cable service tier subscribers citywide for three (3) consecutive months and the company has repaid twenty million dollars (\$20,000,000.00) of its initial principal debt, the company shall pay an annual amount pursuant to this chapter of one hundred seventy-five thousand dollars (\$175,000.00) to the city for public service/public interest programming semiannually unless the full cable service tier subscriber count falls below ninety thousand (90,000) citywide for three (3) consecutive months. In that event, the payment schedule under subsection (iii) above shall govern. The company agrees to pay to the city one (1) per cent of gross annual revenues in lieu of any and all funding under this subsection, provided that said rate shall apply only when the company has repaid from its operating funds no less than twelve million five hundred thousand dollars (\$12,500,000.00) of its debt.* In the event that the company has not repaid twelve million five hundred thousand dollars (\$12,500,000.00) of its debt from its operating funds, as specified in subsection (iv) above, by the year 2000, the company agrees to provide additional equipment or other capital assets in the amount of fifty thousand dollars (\$50,000.00) during the year ending December 31, 2000, in addition to the programming payment set forth in either subsection (iii) or (iv), whichever applies, and, an additional twenty-five thousand dollars (\$25,000.00) in capital assets each year thereafter. This obligation for additional equipment or other capital assets shall not continue once~~

~~company has repaid twelve million five hundred thousand dollars (\$12,500,000.00) of its debt from its operating funds, as specified herein, and its annual payment for public interest and/or public service programming becomes one percent of company's annual gross revenues.~~

~~(v) For purposes of this section, the company shall include bulk subscriber equivalents in calculating full cable service tier subscribers. "Bulk subscriber equivalents" shall be calculated for each bulk contract based on the following formula: The full cable service tier monthly rate shall be divided into the per unit monthly bulk contract rate as multiplied by the number of units in the building or buildings subject to the bulk contract. The sum of bulk subscriber equivalents for all such bulk contracts shall be included in the final calculation of "full cable service tier subscribers."~~

~~(vi) In accordance with the agreement between the city and the MTN, or any successors thereto, ("MTN-city agreement") dated April 1, 1986, including but not limited to Article I, section 1.01(1); Article II, section 2.01(a); Article IV, section 4.02; Article IX, section 9.01, et seq., and Article XI, section 11.07, thereof, the MTN-city agreement, and any budgets or agreements relating thereto, shall be amended to conform to this amendatory ordinance and shall be superseded by the terms hereof.~~

~~(h) Programming carried by MTN shall be included in the same fashion as other nonpremium programming in any directory of programming (electronic or printed) produced by the company. However, the company reserves the right not to include changes in the proposed MTN programming which are not provided within the schedule for submission established by the publisher of the printed directory or less than seven (7) days before the electronic programming directory is to be produced. The company shall pay for listing of public interest/public service programming on Tier I on the distributed information processing (DIP) guide, or any successor thereto, up to one thousand five hundred dollars (\$1,500.00) annually, provided the MTN supplies the programming schedules on terms and conditions required by DIP guide, or any successor thereto. MTN shall be given space for a monthly guest column in any printed program guide and shall be allowed to purchase advertising at reasonable rates. MTN shall have the right to resell any advertising it purchases.~~

~~(i) *Services for the hearing impaired.* The MTN shall provide programming services for the hearing impaired on its channels subject to the provisions of Article III, section 8. These services may include:~~

~~(1) The appropriate retransmission of available video services and computer/digital transmissions for the hearing impaired which are transmitted by communications satellite. The company shall make these services available to MTN at company's cost. The company shall not remove captioning on any programming.~~

~~(2) The signing and/or captioning of locally produced programming created by, or~~

~~with the assistance of, MTN shall be the responsibility of MTN.~~

~~The company may use the MTN's captioning capability to produce captioned programming. The MTN may use the company's capability, if any, to produce captioned nonprogramming.~~

~~(j) *Reservation by city.* Prior to MTN implementation or in the absence of any applicable MTN operating authority or pending city approval of its budget, the city may contract with the company to provide services, equipment, programming, and consultation necessary for the operation of the MTN. Expenditure or commitment by the city of MTN operating and/or capital resources is authorized in furtherance of such operations. The city reserves the right, at its discretion, from time to time, to determine whether the company, pursuant to an agreement, or MTN is performing its purposes in a manner satisfactory to the city, and if it is not, the city, without recourse by the company or MTN, may receive and reallocate all or a portion of the channel capacity, operating appropriation, and capital appropriation, including its facility and equipment purchased previously with such appropriations, to another entity, including the company. However, at no time shall company's commitment to local programming be less than that described in this section. A new entity shall be required to comply in all respects with the legal responsibilities which MTN has assumed under this section.~~

~~**Section 9. Minimum standard for use of access channels.** (a) The company through the MTN or agreement with the city shall, to the extent of the system's available channel capacity, provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first come, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels required in this subdivision. No charges shall be made for channel time or playback time of prerecorded programming on at least one of the specially designated noncommercial public access channels provided for herein; provided, however, that personnel, equipment and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a lowcost means of television access. Where demand for use of the specially designated access channels set out within this subdivision does not warrant activation of all the specially designated access channels required in this subdivision, public, education, governmental, and leased access channel programming may be combined on one or more cable channels. To the extent time is available therefor, access channels may also be used for other broadcast and nonbroadcast services, provided that said services are subject to immediate displacement if there is demand to use the channel for its specially designated purpose. In the event that shared access programming is undertaken, at least one full-channel shall be available on the VHF spectrum for shared access programming.~~

~~(b) Whenever the specially designated noncommercial public access channels or the specially designated educational access channel or the specially designated local~~

~~government access channel, or the specially designated leased access channel required in this section is in use during eighty (80) per cent of the weekdays (Monday through Friday), for eighty (80) per cent of the time during any consecutive three-hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, the company, through MTN or agreement with the city shall have six (6) months in which to provide a new specially designated access channel for the same purpose, provided that provision of such additional channel or channels shall not require the company to install converters. However, nothing contained herein shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to this franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.~~

~~(c) The company through MTN or agreement with the city shall establish rules pertaining to the administration of the specially designated noncommercial public access channel, the specially designated educational access channel and the specially designated leased access channel required by this section. The operating rules governing the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated leased access channel shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use.~~

~~(d) The company through MTN or agreement with the city shall make readily available for public use at least the minimum equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel required by this section. The company through the nonprofit corporation shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery-operated portable equipment. Need within the meaning of this subdivision shall be determined by subscriber petition. The petition must contain the signatures of at least ten (10) per cent of the subscribers of the system, but in no case more than five hundred (500) nor fewer than one hundred (100) signatures.~~

~~(e) MTN shall have reasonable access to technical equipment, such as stereo FM audio signal capability, interactive computer capability, digital special effects generators, computer editing equipment and other technical equipment as it becomes available under the following conditions:~~

- ~~(1) Capacity must be available.~~
- ~~(2) Access to such equipment can be made available without interfering with any proprietary interest of the company, or the privacy interests of the company or its subscribers.~~
- ~~(3) Any MTN personnel utilizing such equipment must be trained and qualified in its use.~~
- ~~(4) The MTN shall compensate the company for the use of such equipment at cost.~~

~~(5) The MTN requests for usage of the equipment shall be made in a manner consistent with normal business practices of the company and the timing and/or frequency of MTN demands shall not materially interfere with the business operations of the company.~~

~~**Section 10. Regional Channel 6.** VHF Channel 6 shall be designated as the uniform regional channel by the company. Until such time as it becomes operational, it may be utilized by the company as it deems appropriate. Use of time on the regional channel or channels shall be made available without charge.~~

~~**Section 11. Leased access channels.** (a) Company agrees to reserve the following channel capacity initially for lease, on a nondiscriminatory basis, as a minimum:~~

- ~~(1) Five (5) per cent of the downstream channel capacity of the residential network.~~
- ~~(2) One upstream channel on the residential network.~~
- ~~(3) Twenty (20) per cent each of the downstream and upstream channel capacity of the institutional network.~~

~~(b) Company shall not utilize its franchise position to prevent leasing of channels by other entities offering nonentertainment services competitive to those offered by the company.~~

~~(c) All leased channel service revenues at the subscriber level shall be included in gross revenues subject to the franchise fee. Such revenues shall include monthly or per-use fees charged to users of services by lessees, but shall not include direct revenues generated by the sale of specific products offered by these services.~~

~~**Section 12. Universal connection.** The city may require that all dwelling units within the city shall be connected physically to the cable system by the company by means of drop cables terminating at each dwelling unit, whether or not the dwelling unit occupants desire to subscribe to cable service. The cost and charges shall be determined by the city at the time such connection is required. Company shall be entitled to recover the incremental cost of providing a universal connection.~~

~~**Section 13. Penalties.** (a) If the company fails to perform any material obligation under this franchise, or fails to do so in a timely manner, the city may at its option, and in its sole discretion assess against the company monetary penalties as follows:~~

- ~~(1) For failure to complete system construction in accordance with the construction plan (see Addendum A), unless the city council specifically approves the delay by motion or resolution due to the occurrence of conditions beyond company's control, company shall pay such penalties as are set forth in Article II, section 3(c).~~
- ~~(2) For failure to provide data, documents, reports, information or to cooperate with the city during an application process or cable communications system~~

~~review, company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation occurs or continues.~~

- ~~(3) For failure to test, analyze and report on the performance of the system following a request pursuant to this franchise, the company shall pay the city fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.~~
- ~~(4) Forty-five (45) days following adoption of a resolution of council determining a failure of the company to comply with operational or maintenance standards, company shall pay to the city two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.~~
- ~~(5) For initiating or using a procedure or device for procuring information or data from a subscriber's terminal, dwelling or business without the prior valid authorization of the affected subscriber as required by Article I, section 21(c), the company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation occurs or continues.~~
- ~~(6) For selling, providing or otherwise making available to anyone any information about subscribers obtained by monitoring transmission of any type of signal from a subscriber's terminal, dwelling or place of business without the specific written authorization of the subscriber as required by Article I, section 21(c), the company shall pay five thousand dollars (\$5,000.00) for each such violation. In addition, the total amount of funds paid the company for this information shall be forfeited to the city by company.~~
- ~~(7) For tapping, monitoring or for arranging to tap or monitor any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever without the specific written authorization of the subscriber or pursuant to court order, the company shall pay ten thousand dollars (\$10,000.00) per day for each day, or part thereof, the violation occurs or continues.~~
- ~~(8) For all other material violations, the company shall pay up to two thousand dollars (\$2,000.00) per day, which the company hereby agrees to pay, said assessment to be levied against the letter of credit, hereinabove provided, and collected by city immediately upon said assessment pursuant to the due process procedures of Article III, section 14.~~
- ~~(9) Each violation of each provision shall be considered a separate violation for which a separate penalty can be imposed.~~
- ~~(10) Exclusive of the contractual penalties set out above in this section, a violation of any provision of this ordinance is by Minneapolis Municipal Code deemed to be a misdemeanor.~~
- ~~(11) The rights reserved by the city herein are in addition to all other rights and remedies the city may have under this franchise or any other law, including without limitation, its right to recover from company such additional damages,~~

losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by city by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from city's right to enforce the provisions of the performance bond provided for in Article I, section 17, and is intended to provide compensation to city for actual damages.

~~(b) For violations considered by city to have materially degraded the quality of service, city may order and direct company to issue rebates or reduce its rates and/or charges to subscribers, in an amount solely determined by city to provide monetary relief substantially equal to the reduced quality of service resulting from company's failure to perform.~~

~~(c) The city may require the company to cure all defaults and breaches of its obligations hereunder that are reasonably possible to cure before company is entitled to increase any rate or charge to subscribers regulated by city hereunder.~~

~~(d) No penalty shall be imposed by city against company for any violation of this franchise without company being afforded due process of law as set forth in Article III, section 14. In the event company's performance of any of the terms, conditions, obligations, or requirements of this franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided company has notified city in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond company's reasonable control or not reasonably foreseeable shall include, but shall not be limited to acts of God, civil emergencies and labor strikes.~~

~~(e) The company shall be liable and/or responsible solely for claims pertaining to the construction, maintenance, and operation of its area specified in Article I, section 8.~~

~~(f) In no event shall the company be required to violate federal or state law or FCC regulation in furtherance of its obligations pursuant to this franchise.~~

Section 14. Procedure upon alleged violation. ~~(a) Whenever the cable communications officer shall find that the company has violated one (1) or more of the terms, conditions or provisions of this ordinance including, but not limited to Article III, Section 13, a written notice shall be sent to the company by registered mail, return receipt requested, informing them of such violation or violations. Such notice shall be entitled "violation notice." The company may remedy violations of subdivisions (1) through (4) and (8) of Article III, section 13, within ten (10) days of tender of the registered letter bearing the violation notice. If the company fails to remedy the violation within ten (10) days after tender of the registered letter, penalties shall be assessed in accordance with the provisions of Article III, section 13. Violation of Article III, section 13, subdivisions (5) through (7) shall not be subject to remedy and shall be assessed from the first day of occurrence.~~

~~(b) Whenever a penalty has been assessed, the company may, within ten (10) days of the tender of written notice as provided for in Article III, section 14(a), notify the cable communications officer by registered mail that there is a dispute as to whether or not a~~

~~violation has, in fact, occurred. Such notice shall specify with particularity the matters disputed by the company.~~

~~The cable communications officer shall, upon receipt of the company's letter, cause the matter to be referred to the city council for public hearing with at least thirty (30) days' notice. The hearing shall be held within forty-five (45) days of receipt of the company's letter by a committee designated by the council to determine if there is reason to believe the company has committed a violation of Article III, section 13. The company and the city shall have the right to seek subpoenas where available and to cross-examine witnesses. After public hearing, the council shall determine if there is reason to believe the company has committed a violation of Article III, section 13, and shall make written findings of fact relative to their determination. If violation is found, company may petition the council for reconsideration of the matter, appeal to the Minnesota Cable Communications Board, or appeal to the courts.~~

~~(c) Upon a determination by the council that there is reason to believe a violation has taken place, and upon expiration of appeal procedures, or in the event the company chooses not to dispute the finding of the cable communications officer, the city finance officer shall immediately make withdrawals against the letter of credit provided for in Article I, section 16, in accordance with the penalties specified for such violations in Article III, section 13, and shall continue to make withdrawals until the company has satisfactorily remedied the term, condition or provision violated.~~

Section 15. Termination/forfeiture. ~~(a) In addition to all other rights and powers of the city, the city may terminate and cancel this franchise and all rights and privileges of the company thereunder in the event that the company:~~

- ~~(1) Substantially breaches any provision of the franchise, or any rule, order, or determination of the city made pursuant thereto, where such violation shall remain uncured for a period of thirty (30) days subsequent to receipt by company of written notice of said violation, except where such violation is not the fault of the company or is due to excusable neglect.~~
- ~~(2) Attempts to dispose of any substantial portion of the facilities or property of its business without prior city approval, as provided for herein.~~
- ~~(3) Attempts to evade any of the provisions of the franchise or practice any fraud or deceit upon the city.~~
- ~~(4) Substantially violates any applicable federal, state or local law.~~
- ~~(5) Substantially breaches or otherwise fails, refuses or neglects to perform its obligations under the terms and conditions of the franchise in accordance herewith.~~
- ~~(6) Exclusions to the foregoing causes for termination/forfeiture of the franchise shall be when such violation, breach, failure, refusal or neglect is caused by any of the following:~~
 - ~~a. Acts of God; or~~

- ~~b. Riots; or~~
- ~~c. Emergencies declared by competent governmental authority; or~~
- ~~d. Other causes not attributable directly or indirectly to actions of the company; or~~
- ~~e. Other causes which are without fault of the company or which result from circumstances beyond the company's control.~~

~~(b) In the event that the city determines that the company has substantially violated any provision of the franchise, any rule or regulation promulgated pursuant hereto or any applicable federal, state or local law, the city may make a written demand on the company that it remedy such violation and that continued violation may be cause for termination. If the violation, breach, failure, refusal, or neglect is not remedied to the satisfaction of the city within thirty (30) days following such demand, the city shall determine whether or not such violation, breach, failure, refusal or neglect by the company was excusable or inexcusable as provided in section 15(a)(6).~~

~~(1) A public hearing shall be held and the company shall be provided with an opportunity to be heard upon thirty (30) days' written notice to the company of the time and the place of the hearing provided the causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the notice. Said notice shall affirmatively recite the causes that need be shown by the city to support a revocation, which shall be pursuant to the express requirements as to revocability of franchises contained in the Constitution of the State of Minnesota, the laws and regulations of the United States and the State of Minnesota, the City Charter, and any agreements between the parties.~~

~~(2) If, after notice is given and, at the company's option, a full public proceeding is held, the city determines that such violation, breach, failure, refusal, or neglect by the company was excusable as provided in section 15(a)(6), the city shall direct the company to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the city may direct.~~

~~(3) If after public notice and hearing it is determined that the company's performance of any of the terms, conditions, obligations, or requirements of this franchise was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof; provided company has notified city in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond company's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor strikes.~~

~~(4) If, after notice is given and, at the company's option, a full public proceeding is held, the city determines that such violation, breach, failure, refusal or~~

~~neglect was inexcusable as provided in section 15(a)(6), then the city may declare, by resolution, this franchise or any renewal thereof be terminated and of no further force and effect unless there is compliance within such period as the city council may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud, misrepresentation, or violation of privacy rights contained in Article I, section 21, subdivisions (b), (c), (d) and (e).~~

~~(5) The issue of forfeiture and termination shall automatically be placed upon the city council agenda at the expiration of the time set by it for compliance. The council then may terminate this franchise forthwith upon finding that company has failed to achieve compliance or may further extend the period, in its discretion.~~

~~(6) In the event city council terminates this franchise, the company shall have a period of thirty (30) days beginning the day next following the date the council terminates the franchise within which to file an appeal with the Minnesota Cable Communications Board pursuant to Minnesota Statutes, Section 238.14. During such thirty-day period and until the board determines the appeal, if an appeal is taken, this franchise shall remain in full force and effect, unless the term thereof sooner expires.~~

~~(7) If, after notice is given and, at the company's option, a full public proceeding is held and appeal is exhausted, the city declares this franchise or any renewal thereof breached, the parties may pursue their remedies pursuant to the franchise or any other remedy, legal or equitable, including but not limited to any action listed in Article III, section 13 hereof.~~

~~(c) If this franchise or any renewal thereof terminates by reason of the default of the company, the city shall have the option to purchase the cable system at book value, less any amount for any damages incurred by the city in connection with such default. Damages incurred by the city shall not be limited to, any payment made by the city authorizing or directing the continued operation of the system.~~

~~(d) In the event that the company dismantles or terminates the cable system or is required by any provision of the franchise to dismantle or terminate the cable system, the company shall, at the city's direction, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the system. Restoration of city property (including, but not limited to, streets) shall be in accordance with the directions and specifications of all affected agencies of the city and all applicable laws. The company at the option and direction of the city shall restore the same at its own expense.~~

Section 16. Foreclosure. ~~Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system, or upon the termination of any lease covering all or a substantial part of the cable communications system, the company shall notify the city of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this franchise governing the consent of the city council to such change in control of the company shall apply.~~

Section 17. Receivership. ~~The city council shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:~~

- ~~(a) Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and~~
- ~~(b) Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to the company.~~

Section 18. Compliance with state and federal laws. ~~Notwithstanding any other provisions of this franchise to the contrary, the company and the city shall at all times conform to all required state laws and rules regarding cable communications not later than one year after they became effective, unless otherwise stated, and conform to all federal laws and regulations as they become effective. Provided, however, if any such state or federal law or regulation shall require the company to perform any service, or shall permit the company to perform any service, or shall prohibit the company from performing any service, in conflict with the terms of this franchise or of any law or regulation of the city, then as soon as possible following knowledge thereof, the company shall notify the city attorney of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city or this franchise.~~

~~Notwithstanding anything in this franchise ordinance to the contrary, this ordinance shall be construed to give effect to those provisions which bring this ordinance into compliance with the requirements of federal, state and local law. The company shall undertake to apply for and prosecute in good faith an application for FCC permission to make payments unless ordered not to do so by that agency or other agency having jurisdiction; but in no event shall the company be required to violate any rule, regulation or order of the FCC or any court having jurisdiction or any other federal or state law.~~

~~If any material section of this ordinance, as determined by the city council, is held to be invalid or preempted by federal or state regulations or laws, the city shall negotiate with the company appropriate modifications to the franchise to provide reasonable relief from such invalidity or preemption. If the parties are unable to reach agreement on such modifications, then the dispute will be submitted to a mutually agreeable arbitrator, in accordance with Minnesota law, who will determine what modifications and/or alternative relief is appropriate. The arbitrator's decision shall be binding on the parties, provided, that no decision of the arbitrator shall require any party to be in violation of any federal or state law or regulation.~~

Section 19. Waiver and release of rights. ~~A. *Waivers associated with the enactment of 86-Or-164.* In consideration for the enactment of 86-Or-164 and in consideration for the agreement contained in Article III, section 8(g) hereof, company~~

forever releases and waives any claims it may have for any overpayments and prepayments made prior to the effective date of 86-Or-164 including the time value of money pursuant to the CCPA, as specified below:

- (1) The company waives and releases, now and forevermore, any and all claims against the city for prior payments to and the city's collection of a five (5) per cent franchise fee without authorization from the Federal Communications Commission ("FCC") which was required pursuant to 47 C.F.R. Section 76.31, for claims of overpayments of franchise fees based on the FCC's decision in *in re: the City of Miami, Florida* (FCC Docket No. CSR-2326, June 28, 1984).
- (2) The company waives and releases, now and forevermore, any and all claims against the city for advances of franchise fees pursuant to Article I, section 9(b) and outstanding advances for public interest/public services programming in the total amount of one hundred thousand dollars (\$100,000.00) for Chapters 1 and 2.
- (3) The company waives and releases, now and forevermore, any and all claims against the city for overpayments for public interest and/or public service programming pursuant to Article III, section 8(f)(2).
- (4) The company waives and releases, now and forevermore, claims that payments made prior to the effective date of 86-Or-164 pursuant to Article I, section 9, and Article III, section 8(f) were in violation of state or federal statutory, constitutional or regulatory requirements, including CCPA.
- (5) The city waives and releases company, now and forevermore, from payments to the city deferred under Addendum D and Addendum C adopted pursuant to 85-Or-174 in consideration of the adoption of 86-Or-164.

~~B.—Waivers associated with the enactment of 89-Or-013. In consideration for the enactment of 89-Or-013, execution of the acceptance of 89-Or-013 and guarantee by KBLCOM, KBL and company, and, in consideration for the settlement agreement and release dated February 2, 1989, between city, company, KBL, KBLCOM, Rogers U.S. Cablesystems, Inc. (RUSCI), Rogers Cablesystems of America, Inc. (RCA), RCA Cablesystems Holding Co. (RCACH), Rogers U.S. Holdings Limited (RUSHL), Rogers Cablesystems, Inc., a Canadian corporation (RCI), it is understood that company, RCI, RUSHL, RCACH, RCA, RUSCI, KBL, KBLCOM and their successors, heirs and assigns, KBL Cablesystems of America, Inc., KBL U.S. Cablesystems Inc., and KBLCMI and KBLCMLP, forever waive, release and discharge the city and MTN, their officers, agents, employees, successors and assigns, from any and all claims, suits, actions, demands, rights, damages, costs and expenses, whatsoever, including all claims for attorneys fees, of any nature arising from or in connection with any payments made or services provided to the city or MTN by company pursuant to Appendix H, Chapter 1 through the "investment date," as defined in a stock purchase agreement dated August 9, 1988 and thereafter amended on December 16, 1988 between KBL and RUSHL or April 30, 1989, whichever is earlier. Said waiver, release and discharge shall include, but not be limited to any claims, suits, actions, damages, rights, demands, costs and expenses, whatsoever, including all claims for attorneys fees through the investment date, or April~~

~~30, 1989, whichever is earlier, based on any claimed violation of state or federal constitution, state or federal statutory or regulatory requirements, including the Federal Cable Communications Policy Act of 1984.~~

~~C. Except as set forth herein or as set forth within the acceptance of 89-Or-013 and guarantee, or as set forth in the settlement agreement and release dated February 2, 1989 executed in conjunction therewith, neither company nor city waives or releases any rights they may have.~~

~~ARTICLE IV. PURCHASE OF CABLE COMMUNICATIONS SYSTEM BY CITY~~

~~**Section 1. Revocation or expiration of the franchise.** In the event the city exercises its option to purchase the cable system upon franchise revocation, the purchase price to be paid by the city shall be the company's capitalization cost less depreciation. "Capitalization cost" shall mean the monies invested for tangible assets, exclusive of intangible assets such as goodwill or value of the franchise. If the city purchases the cable system upon expiration of the term of the franchise or any renewal thereof, the purchase price to be paid by the city shall be fair market value.~~

~~**Section 2. Purchase option.** The city has the right to purchase the system at any time eight (8) years after the grant of a certificate of confirmation. The purchase price of the system shall be fair market value and shall be determined by an independent appraiser mutually agreed upon by city and company.~~

~~**Section 3. Rights to system after franchise end.** Company concedes that it has no vested right to operate the system nor any claim to system revenues once the franchise has been revoked, terminated, forfeited, or after it has expired except for periods during which company continues to operate the system pursuant to Article II, section 8 herein.~~

~~**Section 4. Relocation.** In the acceptance of this franchise company expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.~~

~~**Section 5. Date of valuation.** The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date the city makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.~~

~~**Section 6. Transfer to city.** Upon exercise of either option above and the payment of the above sums by the city and its service of official notice of such action upon company, the company shall immediately transfer to the city possession and title to all facilities and property, real and personal, of the cable communications system, free from any and all liens and encumbrances not agreed to be assumed by the city in lieu of some portion of the purchase price set forth above; and the company shall execute such warranty deeds or other instruments of conveyance to the city as shall be necessary for this purpose.~~

~~**Section 7. Arbitration of value and costs.** (a) In the event the city and the company cannot agree upon the value of the cable communications system, either may give notice of a demand to the other for arbitration.~~

~~(b) Arbitration shall commence and proceed according to law except as follows:~~

- ~~(1) The parties shall, within fifteen (15) days, appoint one arbitrator each who is experienced and knowledgeable in the valuation of business property. Arbitrators shall each agree upon the selection of third arbitrator, similarly qualified, within fifteen (15) days.~~
- ~~(2) Within thirty (30) days after appointment of all arbitrators and upon ten (10) days' written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.~~
- ~~(3) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by the city attorney.~~
- ~~(4) At the close of the hearings and within thirty (30) days, the board of arbitrators shall prepare findings and decision agreed upon by a majority of the board which shall be filed with the city and served by mail upon the company. Unless the parties extend by mutual agreement the time which the board of arbitrators has to make a decision, the proceedings shall become null and void and shall be started anew. If new proceedings are started they shall be based upon the record of the original proceeding. Supplemental evidence may be taken at the request of the new panel of arbitrators in accordance with the procedures outlined in this section.~~
- ~~(5) The decision of the board of arbitrators shall be final and binding upon the parties.~~
- ~~(6) Either party may seek judicial relief in the following circumstances:
 - ~~a. A party fails to select an arbitrator;~~
 - ~~b. The arbitrators fail to select a third arbitrator;~~
 - ~~c. One or more arbitrator is unqualified;~~
 - ~~d. Designated time limits have been exceeded;~~
 - ~~e. The board of arbitrators has not proceeded expeditiously; and~~
 - ~~f. Based upon the record the board of arbitrators abused its discretion.~~~~
- ~~(7) In the event a court of competent jurisdiction determines the board of arbitrators has abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.~~

~~(8) Cost of arbitration shall be borne equally unless the board of arbitrators finds the offer of the city or the demand of the company was unreasonable, in which case, cost may be apportioned so that less or none of the costs may be borne by one party.~~

~~ARTICLE V. RENEWAL OF FRANCHISE~~

~~**Section 1. Renewal.** This franchise may be renewed for a period not less than five (5) years, subject to the same terms and conditions as contained herein or on such different or additional terms and conditions as may be lawfully specified by the city.~~

~~(a) Commencing no later than twenty-four (24) months prior to expiration date of the franchise, the city shall undertake an evaluation of the city's franchise ordinance and the services then being offered in the city.~~

~~(b) Except by mutual agreement of city and company, no earlier than two (2) years and not less than eighteen (18) months prior to the expiration date of the franchise, the company may submit an application for renewal to the city by registered or certified mail. At that time, after giving public notice pursuant to Article I, section 23, the city shall review the provisions of the franchise and shall evaluate the performance of the company, including but not limited to the results of system performance and system and services review sessions. In making this evaluation the city shall consider relevant factors including, but not limited to, the following:~~

~~(1) Technical development and performance of the company's cable system;~~

~~(2) Programming;~~

~~(3) Additional services offered by the company;~~

~~(4) Cost of service;~~

~~(5) All obligations of company as prescribed by the franchise;~~

~~(6) Cable industry performance nationwide; and~~

~~(7) Comments from residents and representatives of community organizations submitted in a manner to be determined by the city.~~

~~(c) After holding a public hearing, the city shall take such actions as it deems appropriate, which may include any of the following:~~

~~(1) If the city determines the company's performance to be satisfactory, a renewed franchise may be granted pursuant to this ordinance.~~

~~(2) In the event the company is determined by the city to have performed unsatisfactorily, new applications may be sought and evaluated and a franchise awarded in accordance with franchising procedures then in force.~~

- ~~(3) The city may direct the company to remove and dismantle its cable system at the company's cost.~~
- ~~(4) The city shall have the option to require the sale by the company and the purchase by the new franchisee of the system at its then fair market value. In the event that the city determines that the existing system is to be used by the new franchisee, the city shall direct in the award of the new franchise the sale by the company and the purchase by the new franchisee of the system at its then fair market value. Upon exercising such option, the city shall proceed to obtain an appraisal of the fair market value of the system to be completed within ninety (90) days of the exercise of its option. No later than sixty (60) days after completion of the appraisal the successor company shall pay the company the fair market value of the system and, upon payment, shall be entitled to title and possession of the system. In the event that the company and the successor company cannot agree upon the fair market value of the system, the successor company shall pay the company seventy-five (75) per cent of the appraised fair market value of the system within sixty (60) days after completion of the appraisal and, upon payment, shall be entitled to title and possession of the system. In that event, the ultimate amount payable to the company shall be determined by action in the district court. As used in this subsection, the term "fair market value" shall not include any allocation of value for expectation of renewal of franchise.~~
- ~~(5) Absent a timely request from company to renew the franchise, the franchise shall terminate at the end of its initial or any renewal term.~~
- ~~(6) The city may take such other action as allowed by law which, in its sole discretion, it shall deem appropriate.~~

~~ADDENDUM A. CABLE COMMUNICATIONS SYSTEM DESIGN, CONSTRUCTION AND SERVICES~~

~~**Section 1. Commitment by company.** A. *Cable communications system design.* The company shall construct a state-of-the-art cable communications system providing the following features:~~

- ~~1. *System configuration.* The cable television system shall be a dual integrated residential/institutional network of approximately four hundred seventeen (417) miles, consisting of at least two (2) interconnected cables. The company shall install the necessary system hardware to accommodate activated bidirectional communications channel capability in its initial configuration.~~
- ~~2. (a) *Channel capacity.* The cable television system shall be installed to deliver signals at frequencies up to four hundred forty (440) megahertz (MHz), with frequency and activated channel capability as indicated below. Total band width on two (2) cables is a maximum of eight hundred eighty (880) megahertz.~~

TABLE INSET:

<i>Dual Cable Network</i>	<i>Signal Direction</i>	<i>Activated Signal Frequency Capacity (MHz)</i>	<i>Activated Video Channel Capacity</i>
Integrated residential network	Outbound	800	120 plus FM band
Integrated residential network	Inbound	48	8 video equivalent plus data
Integrated fiber optic institutional network	Outbound	See Alternative Network	
Integrated fiber optic institutional	Inbound	See Alternative Network	
Interconnect	Outbound	156	26 video equivalent
Interconnect	Inbound	102	17 video equivalent

~~(b) Construction and activation of alternative network shall be completed by August 31, 1990. The alternative network shall meet or exceed the design and construction specifications set forth in the company's project plan dated March 12, 1990, as modified by the alternative network design description dated September 21, 1990. The alternative network shall be owned and maintained by the company for the benefit of the city. The alternative network will be controlled and managed by the city.~~

- ~~i.—The city or the company may suggest areas of priority for construction and activation of distribution network reverse amplifier modules on or before October 1, 1989, and the company shall use its best efforts to construct and activate reverse amplifier modules on the distribution network (feeder cable) in accordance with the priorities designated by the city. The city or the company may suggest construction and activation of comparable technologies and design alternatives to a midsplit configuration, provided that any change in design or substitution of comparable technology shall be valid only upon written approval to company from the city's cable officer.~~
- ~~ii.—During the period of construction set forth herein, the construction and activation of the alternative network shall be secured by the bonding requirements provided for in Article I, section 18 of Appendix H, Chapter 1 and Article I, section 17 of Appendix H, Chapter 2, irrespective of the completion by company of any other construction requirements set forth in the franchise ordinances.~~
- ~~iii.—Company shall secure performance of the construction obligations for the alternative network called for in Addendum A, section 1 in a bond issued in conformance with Article I, section 17, hereof, and in conformance with the acceptance of 89-Or-013 and guarantee, so that the total face value of the bond required hereunder and under the franchise is two million, one hundred thousand dollars (\$2,100,000.00). At such time as the city's cable officer certifies that the alternative network design construction required under Addendum A, section 1 is completed, the bond shall be reduced to the amount required in the franchise ordinances.~~

- ~~iv. During the period of construction and activation of the alternative network, the city may, in addition to any other remedies it may have, either impose any of the penalties set forth in Article II, section 3(c) or Article III, section 13, in accordance with the procedures set forth in Article III, section 14, for any delays in construction, installation, and/or activation of the alternative network.~~
- ~~3. *Satellite uplink.* The company shall provide or cooperate with Twin Cities Public Television and/or any other entities designated by the city to provide satellite uplink capability within one year after the city determines such an uplink to be in the public interest. The terms and conditions of any agreement arrived at pursuant to this section must be approved by city.~~
- ~~4. *Satellite earth stations.* The company, initially and throughout the term of the franchise, shall reasonably provide or have access to a sufficient number of earth stations to receive signals from all operational communications satellites that generally carry programs available to cable systems.~~
- ~~5. *Capacity for interactive services.* The company shall provide initially the capability to utilize up to fifty (50) channels on each of the two (2) network trunk cables for teletext services, as well as video programming, on a selectable basis. In addition, the system shall have the capacity for interactive residential services, including but not limited to security alarm monitoring, home shopping, energy management, electronic banking, videotext, subscriber polling, video games, meter reading, computer/digital transmissions, and one-way or interactive education. Interactive services not offered initially shall be provided as soon as technically and economically feasible in the future. All customer equipment necessary for such services, such as addressable interactive converters, home terminals and home detectors, shall be provided to subscribers by the company in accordance with established and uniform rate schedules. Projected installation costs for the replacement of existing noninteractive converters shall not be considered in determining economic feasibility.~~
- ~~6. *Local origination.* The company may provide local origination facilities and staff. The company is strongly encouraged to work cooperatively with the nonprofit corporation and other public and nonprofit agencies which produce programming. The company shall provide local origination facilities and staff to the extent funded by the city.~~
- ~~7. *Parental control lock.* The company shall provide subscribers, upon request, at no charge, with a parental control locking device or digital code that permits inhibiting the viewing of premium channels.~~
- ~~8. *Status monitoring.* The company shall provide an automatic status monitoring system as an integral part of both the residential and the institutional cable networks.~~
- ~~9. *Home subscriber equipment.* The company proposes the following equipment for home subscriber use:~~

Tier 1: Universal service tier (12-channel service); no subscriber terminal device proposed.

Tier 2: Full-cable service tier; 90-channel capacity with options which will include Zenith Z-TAC, set-top addressable converter or equivalent equipment.

10. *Applicable technical standards.* The company shall meet all technical standards pursuant to Article II, section 5 of the franchise ordinance.

11. *Interactive system design.* The initial interactive system design is capable of providing, but not limited to, security services, opinion polling, alarm monitoring and pay-preview capability. The complete system design includes computer hardware and software, data receivers, home terminal units, converter status transmitters and bridger amplifiers.

Low speed polled data used by the security/opinion polling/status monitoring system has been allocated its own band of frequencies (five (5) to twelve (12) MHz) controlled by a separate code-operated switch in each bridger amplifier. Reverse video transmission has been assigned two (2) television channels at the high end of the sublow band (twenty-one (21) to thirty-three (33) MHz).

The band from twelve (12) to twenty-one (21) MHz has been reserved for future introduction of high-speed data services using a carrier-sense multiple-access transmission protocol. Spare positions have been incorporated in the bridger stations to install new modules which will provide upstream noise and ingress control for the high-speed data channel. The amplifier design includes a failsafe bypass circuit which activates automatically in the event of power failure, amplifier failure or loss of gain. System design also includes a home terminal unit (HTU) for security application as well as the converter status transmitter (CST) for monitoring system performance. Converters with the CST option will enable subscribers to order pay-per-event programming directly through the cable system. Interfaces between the interactive system computer, billing system computer and addressing computer for Zenith Z-TAC converters make the system completely automatic.

12. *Interactive system operation.* The data collection system uses time, frequency and spatial multiplexion. The computer has the capability of scanning through the cable system, receiving data from home terminal units in bridger distribution groups of up to five hundred (500) homes. The following units are employed in the scanning process:

a. *Minicomputers.* Two (2) minicomputers operating in a parallel processing mode control the data collection system. Major functions include scanning control, received data verification and analysis, memory management, alarm transmission and system status monitoring.

b. *Multichannel receivers.* The multichannel receivers receive and demodulate data from all home transmitter and status monitor carriers in operation on the system. The received data and/or missing carrier code is transferred to the minicomputers under program control.

- ~~c. *Trunk switch; Cablesystems Engineering model No. TRS-8.* The trunk switch connects the code-operated switch addressor and the multichannel receiver to any of the trunks radiating from the hub. The trunk switch operates under the computer control.~~
 - ~~d. *Code-operated switch addressor; Cablesystems Engineering model No. COSA-8.* The code-operated switch addressor receives address and command data from the computer and modulates an RF carrier with the information using the frequency shift keying technique.~~
 - ~~e. *Trunk bridger station code-operated switch.* Each bridger station is equipped with two (2) code-operated switches, one controlling the band from five (5) to twelve (12) MHz (data) and the second controlling the band from twenty-one (21) to thirty-three (33) MHz (video). The switches are operated independently by an addressable receiver which demodulates information from the FSK modulated RF signal originated by the COS addressor. A maximum of five hundred (500) subscribers are included in each distribution area fed from a bridger amplifier.~~
 - ~~f. *Home terminal unit.* The home terminal unit (HTU) interfaces with sensor devices. The unit is standby-powered and transmits continuously on one of five hundred (500) discrete frequencies in the band from five (5) to twelve (12) MHz. The data rate is approximately two (2) kilobits per second.~~
 - ~~g. *Status transmitter.* The status transmitter is located in bridger amplifiers and is interfaced with the power supply, amplifier bypass controls, etc. The transmitter is injected on the distribution side of the COS to permit positive confirmation of switch closure.~~
- ~~13. *Computer processing.* The computer program compares the data received from each HTU, CST or status monitor with the data received on the previous scan. Any changes are detected and passed on for further processing.~~

~~Each HTU, CST and status monitor has a unique identity which can be determined by the setting of the trunk switch, COS address and received frequency of the data carrier. Matching the terminal identity with the received data permits the system to look up stored information which can relate the received data to its meaning.~~

- ~~14. *Institutional network.* The routing of the integrated institutional network is contained on the maps in section B(2). The capacity and other system design features are described in Addendum A. The company shall build all areas previously passed by the separate institutional network as a part of the integrated residential/institutional network. The integrated network will also pass through downtown Minneapolis and be available to users.~~

~~B. *System construction.*~~

- ~~1. The construction schedule required pursuant to Article II, section 3, is as~~

follows:

TABLE INSET:

<i>Zone Completion Dates</i>	
<i>Date* Scheduled (months)</i>	<i>Area Number</i>
12	I
18	II
24	III
30	IV
36	V

* Number of months from commencement date to completion as defined in Article II, section 3, for zones established herein.

2. ~~Cable communications system maps. The accompanying maps indicate the proposed routes of the integrated residential/institutional networks of the Minneapolis Cable Communications System which shall initially be served by the system design set forth in Addendum A, section 1A.~~

GRAPHIC LINK: ~~Trunk Network - Interconnect & Residential Map~~

GRAPHIC LINK: ~~Institutional Network Map~~

~~C. Cable communications system services.~~

- ~~1. Residential network services. The company shall provide the following services on the residential network:
 - ~~a. Initial services and programming. Unless otherwise specified the company shall provide, as a minimum, the initial services and programming listed in this section. The company shall not reduce the number of program services without prior written notification to and approval by the city and/or the cable communication officer. The city's approval shall not be unreasonably withheld and its written decision shall be given to the company within thirty (30) days from receipt of this notification. The company may add new services at any time. Any new rates or rate increases necessitated by the added services are subject to the city's approval, where applicable. The company may combine programming into composite channels to improve efficiency of channel utilization or to attract a larger viewing audience. When a distributor of any program or service substantially alters the terms or conditions upon which the program or service is offered, the company reserves the right to substitute similar programming or services or to offer other alternatives on reasonable terms or conditions comparable to the programming or services originally offered, subject to the approval required herein. Such approval shall not be unreasonably withheld.~~
 - ~~b. Subscriber television services. The company shall provide subscriber~~~~

television services as follows:

TABLE INSET:

		Channel Capacity
I.	Universal service tier	12
II.	Full cable service tier**	90*

* Text option available as additional pay service.

**Four (4) FAA-restricted channels are now not available and shall be provided upon FAA/FCC approval.

~~c. Subscriber television services description. The company shall provide, at minimum, the following programming for subscriber television services:~~

~~(1) Twelve-channel universal service.~~

~~Seven (7) broadcast channels and five (5) MTN channels (which includes regional Channel 6)*~~

~~*To the extent must-carries increase, must-carries will have priority over MTN channels consistent with the Laws of Minnesota and FCC rules.~~

~~(2) Ninety-channel full cable service tier.~~

~~(a) Carriage of seven (7) local area broadcast television stations.~~

~~(b) Full carriage of three (3) distant broadcast television stations:~~

~~WGN Chicago~~

~~WTBS Atlanta~~

~~CFMT Toronto*~~

~~* Pending availability~~

~~(c) Carriage of the following video programming services distributed by communications satellite or equivalent programming of the same general class to the extent it is available:~~

~~1. American Education Television Network (AETN)~~

~~2. Appalachian Community Service Network (ACSN)~~

~~3. Black Entertainment Television (BET)~~

4. ~~Black Music Television*~~
5. ~~Lifetime~~
6. ~~WCCO news channel~~
7. ~~Cable New Network II (CNNII)~~
8. ~~Cable-Satellite Public Affairs Network (C-SPAN)~~
9. ~~Christian Broadcasting Network (CBN)~~
10. ~~Cinemerica*~~
11. ~~ESPN II*~~
12. ~~Eternal Word Television Network~~
13. ~~Good Stuff*~~
14. ~~Kid Vid Network*~~
15. ~~Home Music Store*~~
16. ~~Modern Satellite Network (MSN)~~
17. ~~Nashville Network*~~
18. ~~National Christian Network (NGN)~~
19. ~~National Entertainment Television*~~
20. ~~National Jewish Television (NJT)~~
21. ~~National Spanish Television Network (NSN)~~
22. ~~Nickelodeon~~
23. ~~Opryland Music Network*~~
24. ~~People That Love Network (PTL)~~
25. ~~The Preview Network~~
26. ~~Satellite Program Network (SPN)~~
27. ~~Satellite News Channel I (SNC)~~

~~28. SNC II~~

~~29. Telefrance~~

~~30. Trinity Broadcasting Network~~

~~31. US Senate*~~

~~32. USA Cable Network (includes Calliope, The English Channel and other programs)~~

~~33. UTV Involvision*~~

~~34. WCCO weather channel~~

~~* Pending availability~~

~~(d) Carriage of combined video/text services.~~

~~(e) Carriage of the following imported automated programming services or equivalent programming of the same general class to the extent it is available:~~

~~1. AP Newscable~~

~~2. AP Washington Report~~

~~3. BIZ NET*~~

~~4. Financial News Network~~

~~5. Reuters Financial/Sports~~

~~* Pending availability~~

~~(f) Carriage of five (5) local automated programming services:~~

~~1. Community Bulletin Board~~

~~2. Cable Guide~~

~~3. Airport Arrival and Departure*~~

~~4. Community Classifieds~~

~~5. Shopping Basket~~

~~* Pending availability~~

~~(g) Carriage of the following optional pay television services or equivalent programming of the same general class to the extent it is available.~~

1. Cinemax
2. Galavision
3. Home Box Office
4. Home Theatre Network
5. The Movie Channel
6. Brave
7. Showtime
8. The Disney Channel
9. Spotlight
10. Public Subscriber Network*
11. Playcable*
12. Pay Per View

Additionally, the company will provide the following on the full cable service tier:

1. Entertainment and Sports Programming Network
2. MTV: Music Television
3. Arts and Entertainment Network
4. Cable News Network (CNN)

In providing interactive service, the company will offer the following optional interactive services by such time as construction of the cable communications system has been completed and/or pending availability:

(a) Security Services. The company interactive system is proposed for security service. The technology is described in Section I, Part A of this addendum.

(b) Reuters IDR Information Retrieval. The Reuters Company has developed a full field teletext system to transmit data using satellite and cable television systems. The Reuter IDR signal is handled in the same manner as a conventional video transmission and uses one standard six (6) MHZ channel. Each subscriber to the service is supplied with a Reuters terminal which receives the IDR signal and converts it to text

~~format on the attached video monitor.~~

~~(c) Dow Jones News Retrieval. Dow Jones is currently using TOCOM equipment for this service although other systems have been discussed. Subscribers are supplied with a TOCOM terminal which exchanges data with the subscriber's microcomputer or dumb terminal over an RS-232 interface.~~

~~(d) The Source. The Source is planned to be a teletext transmission in the vertical blanking interval of regular video channels. The SSAVI video encoder has the capability of inserting data into the vertical blanking interval which can be retrieved and decoded using suitably equipped Z-TAG converters.~~

~~(e) Pay-per-view programming. Pay-per-view programming will be delivered using the Zenith Z-TAG addressable converter system.~~

~~(f) Opinion polling. The company interactive system is proposed for opinion polling. The technology is described in Section A.~~

~~(g) Interactive text. Interactive text is planned to be a telecast transmission in the vertical blanking interval of regular video channels. The SSAVI video encoder has the capability of inserting data into the vertical blanking interval which can be received and decoded using suitably equipped Z-TAG converters.~~

~~(h) Home banking and home shopping. The technical system adopted for these services would be selected in cooperation with the home banking and home shopping participants.~~

~~(i) Time-Shared Telidon. Time-Shared Telidon is provided with a microcomputer database system developed by company. Access is provided through the interactive converter keypad or touch tone telephone. Data is transmitted to Telidon decoders at the head end to convert the data into a conventional video image which is modulated and transmitted to the subscriber's converter. The term "Telidon" refers to the North American Presentation Level Protocol Syntax (ANSI X3L2.1 Videotex/Teletext Character Sets).~~

~~(j) Newspaper services. The technology selected for newspaper services will be determined in consultation with the participating newspapers.~~

~~d. Subscriber FM service. The company shall provide subscriber FM service including the following:~~

~~(1) Local radio stations.~~

~~(a) KQRS~~

~~(b) KMOJ~~

~~(c) WAYL~~

~~(d) KSTP~~

~~(e) KNOF~~

~~(f) KBEN~~

~~(g) KSJN~~

~~(h) KTCR~~

~~(i) KTIS~~

~~(j) WLOL~~

~~(k) WCTS~~

~~(l) KDWB~~

~~(m) KEEY~~

~~(n) WCCO~~

~~(o) KFMT~~

~~(p) KFAI~~

~~(q) KTWN~~

~~(r) KUOM~~

~~(s) KBEM~~

~~(t) WMMR~~

~~(2) Other audio services:~~

~~(a) WFMT (Chicago)~~

~~(b) JISAL~~

~~(c) Shortage Composite--Services International*~~

~~(d) Reading Services for the Blind~~

~~(e) Seeburg/Lifestyle~~

~~(f) NCN Family Radio Network~~

~~(g) Stereo simulcast services in conjunction with satellite video programming services such as "MTV: Music Television," "CBS Cable" and others as available.~~

~~*Pending approval~~

~~e. *Availability of programming services.* In the event that any programming service as described in this commitment by company is or becomes unavailable to the company, the company may substitute equivalent programming of the same general class to the extent it is available.~~

~~f. *Leased access services.*~~

~~(1) The company shall provide channels for leased access use, in accordance with the rules of the Minnesota Cable Communications Board and the MCS Franchise Ordinance on the residential network of the cable communications system.~~

~~(2) The company shall provide channels for leased access use on the institutional network of the cable communications system in accordance with the MCS Franchise Ordinance.~~

~~(3) The company shall establish operating rules for leased access channels as provided for in the rules of the Minnesota Cable Communications Board. These rules shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use as required.~~

~~g. *Institutional network services.* The company shall offer all economically feasible video, data and/or voice communications services within the technical capacity of the cable system to institutional subscribers by such time as construction of the cable system is complete.~~

~~**Section 2. Channels dedicated for public usage.** The company shall dedicate channels for public use to be administered by a nonprofit corporation designated by the City of Minneapolis as specified in Article III of the Franchise Ordinance.~~

~~A. *Availability of access channels.* In accordance with the rules of the Minnesota Cable Communications Board and with the franchise ordinance, the company, through the city-designated nonprofit corporation, shall provide all access channels as required by law. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels.~~

~~B. *Administration of access channels.* The company, through the nonprofit corporation and in accordance with the rules of the Minnesota Cable Communications Board and city of the [sic] franchise ordinance, shall establish operating rules governing the specially designated noncommercial public access channel, the specially designated educational access channel and the specially~~

designated leased access channel which shall be filed with the Minnesota Cable Communications Board within ninety (90) days after any such channels are put into use. All such rules shall comply with applicable federal, state and local regulations.

~~ADDENDUM B. MINNEAPOLIS CABLE COMMUNICATIONS RATE ORDINANCE~~

~~Article I. General Provisions~~

Section 1. Title of ordinance. This ordinance shall be known and may be cited as the "Minneapolis Cable Communications Rate Ordinance."

Section 2. Definitions. Words not defined herein shall be defined in accordance with the provisions of Article I, section 2, of the "Minneapolis Cable Communications Franchise" ordinance.

Apartment shall mean any building with two (2) or more residential units.

Residential unit shall mean any single family dwelling, apartment unit or apartment building recreation or common area.

Standard installation shall mean, unless otherwise specifically provided, an aerial drop of no more than one hundred fifty (150) feet. An underground drop of no more than one hundred fifty (150) feet shall be a standard installation only in the event that all utilities are underground.

Section 3. Regulation of rates; effective date. No charge shall be made or imposed by the company for any cable communications service subject to regulation by the city, except in accordance with the provisions of this ordinance and the provisions of the "Minneapolis Cable Communications Franchise Ordinance".

This ordinance shall be in effect, after passage and publication, as of the commencement date of the "Minneapolis Cable Communications Franchise Ordinance;" and, shall remain in effect until amended or superseded in accordance with the provisions set out in the "Minneapolis Cable Communications Franchise Ordinance."

Section 4. Captions. Section captions or headings are intended solely to facilitate reading and reference to the provisions of this franchise ordinance and shall not affect the meaning or interpretation of any provision.

Section 4.5. Compliance with state and federal law. Notwithstanding any provision of this ordinance to the contrary, the city will exercise its regulatory authority over company's rates in a manner consistent with federal or state statute and regulation. This section shall apply when a federal or state statute or regulation preempts the authority of the city to regulate in accordance with this ordinance.

Section 5. Rights of city reserved. Irrespective of the regulation or lack thereof of any service offered now or in the future by the company and regardless of whether or not a service is designated as basic or premium/pay, the city reserves the right to

~~regulate any service when such regulation is not specifically prohibited or preempted by federal or state law.~~

~~**Section 6. Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.~~

~~Article II. Franchise Fee~~

~~The company shall pay, as compensation to the city, a franchise fee of five (5) per cent of its gross revenues.~~

~~Article III. Basic Installation Services~~

~~**Section 1. Initial rates and charges.** The Company's initial rates and charges shall not exceed those listed in this section.~~

~~**Section 2. Residential installation.** The initial rates and charges for installation to residential subscribers in its area shall not exceed the following:~~

	Installation Charge
(a) Universal service tier (12-channel service):	
First TV outlet, standard television receiver	\$14.95
First TV outlet, cable-ready television receiver*	15.95
Additional TV outlets, each	N/A
Relocation	10.00
Reconnection	10.00
Change of status	10.00
* Capable of receiving unscrambled cable television channels without converter	
(b) Full cable service tier (90-channel capacity service):	
First TV outlet	\$29.95
Converter (no deposit charge)	no

	charge (1)
Relocation	10.00
Reconnection	10.00
Change of status	10.00
<i>(c) Premium/pay: The initial rates for installation of premium/pay services shall not exceed the following:</i>	
Home Theater Network Plus	\$10.00
The Movie Channel	10.00
Home Box Office	10.00
Cinemax	10.00
Showtime	10.00
Play Cable	to be determined
Public Subscriber Network	10.00
Galavision	10.00
Brave	10.00
The Entertainment Channel	10.00
The Disney Channel	10.00
Spotlight	10.00
Text	to be determined
Parental security control lockout (parental control device)	no charge
Reuters Instant Data Retrieval	varies according to level of service chosen

(d) FM service installation:

~~As part of initial service~~ no charge

~~As separate installation~~ \$ 9.95

~~(e) Home security service: Basic home security service shall include (i) one smoke detector or one alert button and (ii) two (2) door contacts. One visual signaling device will be provided for the hearing impaired upon written request prior to installation.~~

~~(f) Upgrade service: From universal service to higher service (unless home security or premium/pay service is ordered, in which case the charge shall be [as] specified above)~~ \$10.00

~~(g) Waiver of installation fees:~~

~~(1) When service first offered: All installations of first outlets except universal service are free within thirty (30) days after service is first available to each home.~~

~~(2) For promotional activities: The company reserves the right to waive or reduce installation fees during initial construction periods and special promotions on a nondiscriminatory basis.~~

~~(h) Multiple services installed at same time:~~

~~(1) All pay installation charges other than Play Cable, Routers, Text options, and other similar services will be waived if one or all pay services are installed at the time of the initial service installation.~~

~~(2) The company reserves the right to charge a ten-dollar (\$10.00) reconnection, relocation, or change of status charge after first installation.~~

~~(i) Reconnection of service: The company shall restore service to customers wishing restoration of service, provided customers shall first satisfy any previous obligations owed. A maximum reconnection fee of ten dollars (\$10.00) may be charged the customer. If the customer's service has been disconnected during the preceding six (6) months for failure to satisfy obligations owed, the company may require the maintenance of two (2) months' advanced payment as a condition precedent to restoration of service.~~

~~(j) Drops: Aerial drops, or underground drops when required pursuant to section 2, in excess of one hundred fifty (150) feet shall cost the same as standard installation, plus the company's cost for that portion of the drop in excess of one hundred fifty (150) feet. The company may request advance payment for such installation.~~

~~(k) *Underground drops:* Underground residential drops shall be charged at the company's cost minus cost of standard installation. The company may request advance payment for such installation. An underground drop of no more than one hundred fifty (150) feet shall be a standard installation only in the event that all utilities are underground.~~

~~(l) *Equipment security deposit option and recovery costs:*~~

~~(1) The company reserves the right to charge a deposit subject to Minnesota Statutes Section 325E.02 of up to twenty-five dollars (\$25.00) for each addressable converter or a deposit of up to fifteen dollars (\$15.00) for each other converter. The company reserves the right, upon notice to the city, to institute reasonable deposits of not more than twenty-five (25) per cent of the cost of such equipment for any other equipment placed in subscribers' homes, if the company experiences excessive damage to or loss of such equipment.~~

~~(2) The company reserves the right to charge full replacement, repair, and administrative costs for converters or other company-owned equipment which is lost, stolen, or damaged through neglect or misuse by the customer.~~

~~(m) *Standard converter and options:* The company shall provide set-top converters and reserves the right to offer enhanced converter and related equipment options at an additional charge.~~

Section 3. Installation to governmental, educational or nonprofit institutions. ~~(a) A single standard installation of residential service cable shall be made upon request without charge at each governmental, nonprofit, and educational institution. Installation charges shall be at an amount equal to the company's internal cost to the extent they exceed a standard installation, except as provided for in (f) below. Additional outlets at each institution will be installed at an amount equal to company's internal cost.~~

~~(b) A single standard installation of institutional network shall be made upon request without charge to each governmental, educational and nonprofit institution. Installation charges shall be at an amount equal to the company's internal cost to the extent they exceed a standard installation except as provided in (f) below. Additional outlets at each institution will be installed at an amount equal to the company's internal cost.~~

~~(c) Interior cabling, outlets and exterior distribution within a complex of buildings in a geographical area shall be provided upon request at the company's cost.~~

~~(d) Should the school district or the city desire to provide its own exterior/interior distribution, the company shall render technical assistance without charge. Such installations are subject to inspection and approval by the company.~~

~~(e) Underground installations shall be at the company's cost, less the company's rate for a standard installation, except as provided for in (f) below.~~

~~(f) The company shall extend feeder cable to a property line and a drop (not limited by the definition of "standard installation") to the closest point of the building for each of the following public buildings with technically compatible internal distribution networks approved by the city's cable officer on a schedule established by the company and the city, but said construction shall be completed no later than August 31, 1983:~~

~~Minneapolis City Hall
Hennepin County Government Center
Central Library
Auditorium and Convention Center
Civil Service/Public Health Building
MCDA building
Summit Bank building (park board)
Three (3) Downtown Fire Stations
Minneapolis Community College
Minneapolis Technical Institute
Hennepin County Medical Center.~~

~~**Section 4. Prewiring projects.** The owner or builder of a residential or commercial building or other project shall have the right to prewire an entire project for cable service.~~

~~A "project" for the purpose of this section shall be any new construction which at the time of prewiring is not past the normal stage of electrical wiring.~~

~~(a) *Owner or builder prewiring.* The company shall provide a standard installation to a prewired project at the standard installation rate if the owner or builder complies with the following procedure:~~

~~(1) Owner or builder uses methods and materials approved in advance or supplied by the company. The company shall supply specifications and materials at its cost upon request.~~

~~(2) Owner or builder requests inspection and approval according to a schedule supplied by the company. The company shall inspect and provide technical assistance at its cost upon request.~~

~~(b) *Company prewiring.* The company shall provide a standard installation to a prewired project at the standard installation rate if the company has prewired the project. All charges for prewiring and rewiring of multiple-unit facilities will be accomplished on an actual cost of installation basis by the company. Request for prewiring shall be sufficiently in advance for the company to arrange for prewiring except in no event shall such advance notice be required to exceed forty-five (45) days prior to commencement.~~

~~(c) *Aerial and underground drops.* Any aerial installation in excess of one hundred fifty (150) feet to a prewired project shall be charged according to Article III, section 2(1) and any underground installation shall be charged according to Article III, section 2(m).~~

~~(d) *Individual subscribers within project.* Nothing herein shall prevent the company~~

from charging a connection fee in a prewired building of up to fifteen dollars (\$15.00) to individual subscribers within the project at the time they request service.

Article IV. Monthly Subscriber Service Rates

Section 1. Standard monthly service rates. Except as otherwise specifically provided for, the initial monthly rates and charges for service to commercial establishments or institutions, single-family dwellings, single apartment units, single condominium units, apartment building recreation areas or condominium common areas shall not exceed the following:

	Monthly Rate
(a) Universal service tier (12-channel capacity service):	
Standard television receiver, first TV outlet	\$1.95
Additional TV outlets, each	N/A (not available)
Converter (no deposit charge)	(f)
(b) Full cable service tier (90-channel capacity service):	
First TV outlet	\$11.95
Additional TV outlets, each	11.95
Converter (no deposit charge)	no charge
(c) Premium/pay monthly service: The initial monthly rates and channels for premium/pay services shall not exceed the following except in accordance with Article I, Section 14:	

Home Theater Network

The Movie Channel

Home Box Office

Cinemax

Showtime

~~Play Cable~~

~~Public Subscriber Network~~

~~Galavision~~

~~Brave~~

~~The Entertainment Channel~~

~~The Disney Channel~~

~~Spotlight~~

~~Text~~

~~Reuters Instant Data Retrieval~~

~~The company reserves the right to set or charge monthly rates for premium/pay services herein at its discretion.~~

	<i>Monthly Rate</i>
(d) FM service monthly rate (per outlet)	1.50
(e) Home security service, monthly rates:	
Monitoring	9.95
Terminal/maintenance	<u>6.00</u>
Total	\$15.95
(f) On universal service tier, a converter may be necessary to ensure interference-free reception of over-the-air broadcast channels on some television sets.	
(g) There is no monthly charge for duplicate pay service provided to additional outlets, excluding interactive pay services. The company reserves the right to initiate such charges if the company is required to reimburse pay programming suppliers for service to additional outlets.	
(h) The company reserves the right to offer monthly rate discounts upon the purchase of two (2) or more premium/pay services.	
(i) Equipment security deposit option and recovery costs:	
(1) The company reserves the right to charge a deposit subject to Minnesota Statutes 325E.02 of up to twenty-five dollars (\$25.00) for each addressable converter or a deposit of up to fifteen dollars (\$15.00) for each other	

~~converter. The company reserves the right, upon notice to the city, to institute reasonable deposits of not more than twenty-five (25) per cent of the cost of such equipment for any other equipment placed in subscribers' homes, if the company experiences excessive damage to or loss of such equipment.~~

~~(2) The company reserves the right to charge full replacement, repair, and administrative costs for converters or other company-owned equipment which is lost, stolen or damaged through neglect or misuse by the customer.~~

~~(j) *Standard converter and options:* The company shall provide set-top converters and reserves the right to offer enhanced converter and related equipment options at an additional charge.~~

~~(k) *Pay-per-view:* In charging for pay-per-view program or service offerings, the company may initiate and vary its charge according to the particular program or service offered.~~

~~**Section 2. Standard monthly service rates for governmental, educational or nonprofit institutions.** Where installation of residential cable is made without charge to governmental and educational institutions, there shall be no monthly charge for one outlet of full cable service tier on the residential cable, including set-top converter if necessary. The company may charge for all services to individual units within a building, including but not limited to, individual student housing units (i.e., dormitory rooms), hospital rooms, etc.~~

~~**Section 3. Apartment and commercial facilities.** The initial rates and charges to apartments and commercial organizations for basic cable service up to the "basic service tier" shall not exceed the following:~~

TABLE INSET:

<i>Apartments—Individual Rate</i>	<i>Standard Installation Charge</i>	<i>Monthly Rate</i>
First outlet	Same as residential rates	Same as residential rates
Reconnection and change of status	Same as residential rates	Same as residential rates
<i>Commercial</i>		
First outlet	Initial outlet—Same as residential rates	Initial outlet—Same as residential rates

~~**Section 4. Bulk monthly rates.** A reduction of the monthly basic cable service charge will be offered by the company for condominiums, apartments, nursing homes, hospitals, hotels, motels, and other commercial units of ten (10) units or more. It will be~~

~~negotiated based on the number of units available and participating. At no time will a multiple-unit monthly service charge exceed the maximum monthly charge for a single-family residence.~~

~~**Section 5. Standard monthly service rates for profit and commercial enterprises.** The company may charge maximum monthly service rates pursuant to Article IV, section 1, for residential cable service to profit and commercial enterprises. The company charges for use of the institutional and commercial communications network by profit and commercial enterprises will be dependent on the extent and requirements of use. Nonstandard installation shall be available upon request at an amount equal to the company's internal cost plus reasonable overhead.~~

~~**Section 6. Service calls.** Service requests for maintenance or repair of cable facilities are performed at no charge unless such maintenance or repair is required as a result of damage caused by a subscriber. The company may charge a maximum of ten dollars (\$10.00) for service calls to subscribers' homes where the problem is obviously not the result of a cable failure.~~

~~*Article V. Studio and Equipment Usage*~~

~~**Section 1. Studio and equipment usage.** The company shall not exceed the following initial rates for access studio and video equipment use:~~

	<i>Rates</i>
(a) Noncommercial users	
Studio production time	no charge
Remote production time	no charge
Supervision and instruction	no charge
System playback costs	no charge
Editing costs	no charge
(b) Commercial users	
Studio production time	negotiated
Remote production time	negotiated
Supervision and instruction	negotiated
System playback costs	negotiated
Editing costs	negotiated

Article VI. Maintenance of Initial Rates

Section 1. [No increase permitted initially for other than optional pay services.] The company shall not increase the initial rates for Tier I programming, other than the optional pay services or full cable service tier programming before December 31, 1988. Upon the expiration of said period, those rates and charges for those services for which rate regulation is not preempted by federal or state agencies shall be subject to regulation by the city.

~~ADDENDUM C. RESERVED*~~