

CHAPTER 114: FRANCHISE AGREEMENTS

114.01 Ace Telephone (Acentek)

114.01 ACE TELEPHONE (ACENTEK)

SECTION 1. SHORT TITLE AND DEFINITIONS

A. Short Title. This Franchise Agreement shall be known and cited as the Franchise Agreement.

B. Definitions. For the purposes of this Franchise Agreement, capitalized terms shall be defined as set forth in the Ordinance and, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

"Basic Cable Service" means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 54a(b)(7).

"City" means the City of Lanesboro, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

"City Council" means the governing body of the City of Lanesboro, Minnesota.

"Cable Programming Service" means any video programming provided over a Cable System, regardless of Service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

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

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(1)(2) (1993) and 47 C.F.R. 76.901 (b) (1993).

"Cable Service" or "Service" means (A) the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable Service or

Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).

(I) "Cable System" or "System" means a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities located in City and designed and constructed for the purpose of producing receiving, transmitting, amplifying, or distributing audio, video, and data. System as defined herein shall not be inconsistent with the definitions set forth in Minn. Stat, 238.02, subd, 3 and 47 U.S.C. § 522(7). City and Grantee acknowledge and agree that Grantee will use affiliated telephony networks to overlay video service to the City.

"Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.

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

"Grantee" is Ace Telephone Association DBA Ace Communications Group, its agents and employees, lawful successors, transferees or assignees.

"Gross Revenue" means all revenue derived directly or indirectly by Grantee from the provision of Cable Service within the City. The term Gross Revenue shall not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators of cable Subscribers).

"Installation" means the connection of the System to the point of connection, including standard installations and custom installations.

"Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the cable communication system.

"Normal Business Hours" means those hours during which most similar businesses in City are open to serve customers. in all cases, Normal Business Hours will be 8:00 am to 4:30 pm Monday through Friday.

"Normal Operating Conditions" means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.

"Ordinance" means the City of Lanesboro, Minnesota Cable Television Regulatory Ordinance No.

"Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audiovisual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.

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

"Service Interruption" means the loss of picture or sound on one or more cable channels.

"Standard Installation" means any residential installation within 150 feet or less. The measurement is the airline distance from the center of the highway paralleling the general distribution plant (located on or off the highway) to the network interface device (N ID) of the service drop at the customer's building, or the airline distance from the distribution plant to the NID whichever is shorter.

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

"Subscriber" means any person who lawfully receives cable service, and in the case of multiple office buildings or multiple dwelling units, the Subscriber means the lessee, tenant or occupant.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

- A. Grant of Franchise. This Franchise Agreement is granted pursuant to the terms and conditions of the Ordinance and the terms and conditions outlined below.
- B. Grant of Nonexclusive Authority.
- (a) The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in City of a Cable System as herein defined.
- (b) Grantee shall have the authority to use City easements, public rights-of-way, streets and other conduits for the distribution of Grantee's System. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.
- (c) This Franchise shall not be construed as limiting the right of City, through its proper offices, and in accordance with the Ordinance and Applicable Law, to grant other Franchises containing terms and conditions that are no more favorable or less burdensome than those imposed on Grantee by this Franchise.
- C. Franchise Term. This Franchise shall be (15) fifteen years. Renewals shall be agreed upon in writing by the parties hereto.
- D. Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its

business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise Agreement and to assure uninterrupted Service to each and all of its subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, City, or any other body having lawful jurisdiction thereof

E. Territorial Area Involved. This Franchise is granted for the corporate boundaries of

City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee shall not be required to extend Service beyond its present System boundaries unless there is a minimum density equivalent of eight (8) homes per one-quarter (1/4) cable mile. Access to cable service shall not be denied to any group of potential residential cable subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate Service to annexed or newly developed areas.

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

If to City: City Clerk-Administrator 202 Parkway Avenue Lanesboro, MN 55949

If to Company: Ace Telephone Association 207 East Cedar Street
Houston, MN 55943

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

G. Consumer Protection and Service Standards. Grantee shall provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under normal operating conditions:

(a) Cable System office hours and telephone availability:

(1) Grantee will maintain a local, toll-free or collect call telephone access

line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

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

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

(2) Customer service center and bill payment locations will be open during Normal Business Hours.

(b) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(1) Standard installations will be performed within seven (7) business days after an order has been placed, except during initial launch.

(2) Excluding conditions beyond the control of Grantee, Grantee will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other service problems the next business day after notification of the service problem. Grantee shall resolve all service interruptions within forty-eight (48) hours under normal operating conditions.

The "appointment window" alternatives for Installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(4) Grantee may not cancel an appointment with a customer, without their

consent, after the close of business on the business day prior to the scheduled appointment.

If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(c) Communications between Grantee and Subscribers:

(1) Notifications to Subscribers:

a. Grantee shall provide written information on each of the following areas at the time of installation of service, and at any time upon request: Products and services offered; Prices and options for programming services and conditions of subscription to programming and other services;

Installation and service maintenance policies;

iv. Instructions on how to use the Cable Service;

v. Channel positions of the programming carried on the system; and

vi. Billing and complaint procedures, including the address and telephone number of the Grantee's office within the service area.

b. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes, if the changes are within the control of the Grantee. In addition, the Grantee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by

Section 2.7 (c)(1). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, franchise fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or franchising authority on the transaction between the operator and the subscriber.

(2) Billing:

a. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

b. In case of a billing dispute, the Grantee must respond to a written complaint from a subscriber within thirty (30) days.

(3) Refunds; Refund checks will be issued promptly, but no later than either:

a. The customer's next billing cycle following resolution of the request or sixty (60) days, whichever is later, or

b. The return of the equipment supplied by Grantee if Service is terminated.

(4) Credits: Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Upon request, Grantee shall provide City with a customer service compliance report specific to the system serving City in the form mutually agreed upon, which report shall, at a minimum, describe in detail Grantee's compliance with each and every term and provision of this section and any additional customer service requirements contained in Grantee's Franchise and shall outline and summarize all subscriber complaints received by Grantee during the preceding quarter.

H. Late Fees. Fees for the late payment of bills shall not be assessed until after the

Service has been totally provided and, as of the due date of the bill notifying Subscriber of an unpaid balance, the bill remains unpaid.

SECTION 3. MINNESOTA REQUIRED CONSTRUCTION STANDARDS

A. Nothing in this Franchise shall in any way affect the physical plant used by Grantee or any of its affiliated companies to provide telephone service. The construction standards set forth in this Section 3 are included in this Franchise pursuant to Minnesota Statutes Section 238.084, are to be enforced consistent with applicable law, and are not applicable to existing telephone facilities. City and Grantee acknowledge and agree that Grantee will use affiliated telephony networks to overlay video service to the City.

B. Construction Standards. Subject to Section 3 herein, if the System, or subsequent rebuilds or extensions, proposed for the Franchise area consist of fewer than one hundred (100) plant miles of cable:

1. Within ninety (90) days of the granting of the Franchise, Grantee shall apply

for the necessary governmental permits, licenses, certificates, and authorizations;

2. The energized trunk cable must be extended substantially throughout the authorized area within one (1) year after receipt of the necessary governmental permits, licenses, certificates, and authorizations and the Persons along the route of the energized cable shall have individual Installations as desired during the same period of time; and
3. The above-stated requirements may be waived by City only upon occurrence of acts beyond the reasonable control of Grantee or acts of God.

C. Construction Codes and Permits.

1. Grantee shall obtain all necessary permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.
2. City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal

D. Use of existing poles or conduits:

1. Grantee shall utilize existing poles, conduits and other facilities whenever possible and shall not construct or install any new, different or additional poles, conduits or other facilities whether on public property or on privately owned property until the written approval of City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures shall be removed or modified by Grantee at its own expense whenever City determines that the public convenience would be enhanced thereby.
2. The facilities of Grantee shall be installed underground in those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at sole cost to Grantee.

E. Minimum Interference.

1. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the streets.

2. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of streets and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the streets and public places.

F. Repair of streets and Property. Any and all streets or public property or private

property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as approved by City in the case of streets and other public property. If Grantee shall fail to promptly perform the restoration required herein, City shall have the right to put the streets, public, or private property back into good condition. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to totally reimburse City for such restoration within thirty (30) days after its receipt of City's invoice therefor,

G. Conditions on Street Use.

1. Repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
2. All System transmission and distribution structures, lines and equipment erected by Grantee within City shall be located so as not to obstruct or interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said streets, alleys and other public ways and places, and not to interfere with existing public utility installations. Upon request Grantee shall furnish to and file with City Clerk Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.
3. If at any time during the period of this Franchise City shall elect to alter, or change the grade or location of any street, alley or other public way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of City. If City reimburses other occupants of the street, Grantee shall be likewise reimbursed.
4. Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or

other fixtures placed in any street shall be so placed as to comply with all requirements of City.

5. The Grantee shall, on request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
 6. Nothing contained in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.
- H. Undergrounding of Cable. Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.
- I. Erection, Removal and Joint Use of Poles. Subject to the provisions of Section 3.1 above, no poles, conduits, or other wire-holding structures excluding pedestals and make ready accommodation on existing poles shall be erected or installed by the Grantee on public property without prior approval of City with regard to location, height, type and other pertinent aspects.

SECTION 4. DESIGN PROVISIONS

- A. All programming decisions remain the sole discretion of Grantee provided that Grantee complies with federal law regarding notice to City and subscribers prior to any channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations pursuant to 47 U.S.C. §§ 531-536, and subject to City's rights pursuant to 47 U.S.C. § 545. Grantee shall conduct programming surveys from time to time to obtain input on programming decisions from subscribers.
- B. Build and/or Upgrade of Cable System: Grantee shall build and/or upgrade the Cable System to provide Cable Service in accordance with this Franchise on or before three (3) years. If Grantee fails to build and/or upgrade the Cable System on or before three (3) years it shall constitute a material violation of this Franchise and subject Grantee to all remedies available to City under this Franchise. (More precise specifications for the Cable System build and/or upgrade are attached hereto as Exhibit B.)
- C. Special Testing. City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. City shall endeavor to so arrange its request for such special

testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded sixty (60) days to correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the sixty (60) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the System does not meet FCC technical specifications. If the testing reveals the System does meet FCC technical standards, then the cost of said test shall be borne by the City.

- D. Non voice Return Capability. Grantee is required to use cable having the technical capacity for non-voice return communications. This provision is enforceable only to the extent specifically required by Minnesota Statute Section 238.084 and nothing herein shall affect the telecommunications facilities provided by Grantee or any of its affiliated companies.
- E. Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a lockout device,

SECTION 5. SERVICES PROVISIONS

- A. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing its cable television services within City. Grantee shall have the right to market its Cable Services door-to-door during reasonable hours consistent with local ordinances and regulation.
- B. Subscriber Inquiry and Complaint Procedures, Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), City and Grantee shall prepare and maintain written records of all complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the regional office of Grantee. Grantee shall upon request by City provide the City with a written summary of such complaints and their resolution on a biannual basis.
- C. Subscriber Contracts. Grantee shall submit any residential Subscriber contract utilized to City. If no written contract exists, Grantee shall file with the City Clerk-Administrator a document completely and concisely stating the terms of the residential Subscriber contract offered to customers, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

SECTION 6. PUBLIC ACCESS PROVISIONS

A. Public Educational and Government Access.

1. The City or its designee is hereby designated to operate, administer, promote, and manage access public, education, and government programming) (hereinafter "PEG access") to the Cable System established pursuant to this Section 6. Grantee shall have no responsibility whatsoever for PEG access except as expressly stated in this Section 6 or by a written agreement between City and Grantee.
2. Grantee shall dedicate one (1) channel for PEG access use on the System to be usKi by the City. This channel shall be activated as soon as technically possible after the effective date of this Franchise and only after request from City. All residential subscribers who receive all or any part of the total services offered on the System shall be eligible to receive said access channel at no additional charge. Nothing herein shall be construed to diminish the City's rights pursuant to Minn. Stat. § 238.084, incorporated herein by reference.

B. Access Operating Support. Upon acceptance of this Franchise, Grantee shall provide City with facility and equipment to provide PEG access programming which shall total a maximum of five thousand dollars (\$5,000.00). After one (1) year from

the effective date of this Franchise, the City may require that Grantee collect on behalf of City, upon ninety (90) days advance written request by City, a per Subscriber fee of up to seventy-five cents (\$.75) per month, solely to fund PEG access-related expenditures (hereinafter "Access Operating Fee"). The Access Operating Fee may be adjusted by City no more than once every two (2) years, following an affirmative vote of the City council and upon ninety (90) days advanced written notice to Grantee. The access operating fee shall be adjusted each year, by

vote of the City Council, by an amount equal to the cumulative increase in the Consumer Price Index ("CPI") during the preceding year. Any and all payments by

Grantee to City in support of PEG access programming shall not be deemed "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542). PEG equipment will generally be located on the Grantor's premises, however, Grantee shall have the right to change the location.

C. Access Rules.

1. The City shall implement rules for use of any specially designated access channels. The initial access rules and any amendments thereto shall be maintained on file with the City and available for public inspection during Normal Business Hours.
2. Prior to the cable cast of any program on any PEG access channel established herein, the City shall require any Person who requests access public, education, and government to the System to provide written certification in a form and substance acceptable to Grantee and the City which releases, indemnifies, and holds harmless City, Grantee and their

respective employees, offices, agents, and assigns from any liability, cost, damages and expenses, including reasonable expenses for legal fees, arising or connected in any way with said program.

- D. Grantee as Purchasing Agent. Upon request by City, Grantee shall act as purchasing agent for the City in the acquisition of said equipment to allow the City to take advantage of Grantee's bulk purchasing power. Grantee shall have no obligation to purchase or provide access equipment beyond that stated herein, or to maintain, repair or replace any access equipment.
- E. Periodic Evaluation. Upon written request from either party, Grantee and City shall meet to evaluate the effect of Section 6, above. Both parties agree to discuss any proposal for modification presented by the other party. Nothing herein shall presume or require consent to any such proposed modification. Modifications may only occur by mutual written consent of both parties. The notice and meeting contemplated herein shall be required to occur no more than every three (3) years after adoption of this Ordinance, however, nothing shall prevent mutually agreed upon negotiations between both parties at any time.

SECTION 7. OPERATION AND ADMINISTRATION PROVISIONS

- A. Franchise Fee. Grantee shall pay to City a Franchise Fee in an annual amount equal to five percent (5%) of its annual Gross Revenues. Payments due City under this provision shall be payable quarterly. The payment shall be made within ninety (90) days of the end of each of Grantee's fiscal quarters together with a brief report showing the basis for the computation in accordance with the Ordinance.
- B. Reports to be Filed with City. In addition to all reports required pursuant to the Ordinance, Grantee shall prepare and furnish to City, if requested by the City in writing, at the times and in the form prescribed, such reports with respect to the operations, affairs, transactions or property, as they relate to the System, which Grantee and City may agree upon.
- C. Local Technician. Grantee shall assign a local technician to provide any technical service requested by Subscribers or City. The local technician shall be available to schedule technical service to Subscribers or City during Normal Business Hours,

SECTION 8. MISCELLANEOUS PROVISIONS

- A. Franchise Renewal. Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.
- B. Work Performed by Others, All provisions of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise. This requirement strictly applies to Cable Service and shall not apply to the telephone plant of Grantee or any of its affiliated companies,

- C. Amendment of Franchise Agreement. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 8.6 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws. City shall act pursuant to local law pertaining to the ordinance amendment process. In the event of any direct conflict between the terms and conditions of this Franchise Agreement and the provisions of the Ordinance, the provisions of this Franchise Agreement shall control. Grantee expressly acknowledges and agrees that the City hereby retains all of its police powers and the City may unilaterally amend the Ordinance in the exercise of its police powers and Grantee shall comply with said Ordinance as may be amended; provided, however, that the City hereby agrees to use reasonable efforts to address public health, welfare and safety needs without resorting to amending the Ordinance and in all cases shall not act in any manner which materially impairs the rights and/or privileges granted to Grantee pursuant to the Ordinance or the Franchise Agreement.
- D. Force Majeure. In the event Grantee'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, such Inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Grantee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, untimely delivery of equipment, inability of Grantee to obtain access to an individual's property and inability of Grantee to secure all necessary permits or utilize utility poles and conduit so long as Grantee utilizes due diligence to timely obtain said permits. The provisions contained in this paragraph 4 shall apply only if Grantee, to the extent possible, has notified the City in writing of the reason for its inability to comply with the requirements of this Franchise within ten (10) business days of Grantee's discovery of the reason for its noncompliance.
- E. Compliance with Federal, State, and Local Laws. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective,
- F. Periodic Evaluation. The field of cable communications is rapidly changing and may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for

a maximum degree of flexibility in this Franchise, and to help achieve a continued advanced and modern System, the following evaluation provisions shall apply:

1. The City may require evaluation sessions at any time during the term of this Franchise, upon sixty (60) days written notice to Grantee, provided, however, there shall not be more than one (1) review session during each two (2) year period commencing on the effective date of this Franchise;
 2. All evaluation sessions shall be open to the public and notice of sessions published in the same way as a legal notice. Grantee shall notify its Subscribers of all evaluation sessions by announcement on at least one (1) Basic Service channel of the System between the hours of 7:00 pm. and 9:00 p.m. for five (5) consecutive days preceding each session;
 3. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City and Grantee deem relevant; and
 4. As a result of a periodic review or evaluation session, the City and Grantee shall develop such changes and modifications to the terms and conditions of the Franchise, as are mutually agreed upon and which are both economically and technically feasible taking into consideration the remaining life of the franchise.
- G. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

SECTION 9. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

- A. Publication Effective Date. This Franchise shall be published in accordance with applicable Minnesota law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 9.2
- B. Acceptance.
1. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.
 2. Upon acceptance of this Franchise, Grantee shall be bound by all the terms

and conditions contained herein.

3. Grantee shall accept this Franchise in the following manner:
 - a) This Franchise will be properly executed and acknowledged by Grantee and delivered to City; and
 - b) With its acceptance, Grantee shall also deliver a grant for Access Operating Support, and insurance certificates required herein that have not previously been delivered.

EXHIBIT A
SERVICE TO PUBLIC BUILDINGS
LOCATIONS ADDRESS
Lanesboro Council Chambers

EXHIBIT B
DESCRIPTION OF SYSTEM UPGRADE

1. General Requirements.

Grantee shall use equipment used in high-quality, reliable, modern Cable Systems of similar design. Within ninety (90) days prior to commencement of any System upgrade rebuild or extension, Grantee shall provide to the City a plan for upgrading the current System indicating, at least, a general overview of the construction schedule.

2. General Description.

Grantee shall provide digital television service over affiliated telephony networks, City and Grantee acknowledge and agree that Grantee will use affiliated telephony networks to overlay video service to the City.

3. Design.

Grantee may utilize affiliated telephony networks to overlay video service to the City. Grantee's digital television shall have up to one hundred sixty-four (164) channels, including premium movie channels, pay-per-view and music channels. Grantee shall provide capacity to add channels as dictated by customer demand. City and Grantee acknowledge and agree that Grantee may use affiliated telephony networks to overlay video service to the city.