

**Quad Cities Cable Communications Commission**  
Anoka City Hall – Council Chambers

October 20, 2016, 11:00 AM

**Agenda**

- 1. Call to Order**
- 2. Roll Call**
- 3. Approval of Agenda**
- 4. Administrative Reports**
  - 4.1. Secretary
    - 4.1.1. Approval of the September 15, 2016, commission minutes.
    - 4.1.2. Approval of the September 15, 2016 commission work session notes.
  - 4.2. Treasurer
    - 4.2.1. July/August Financial Reports
  - 4.3. Executive Director
- 5. General Business**
  - 5.1. CenturyLink Franchise Agreement
- 6. Adjourn**

## **MINUTES OF THE REGULAR MEETING OF SEPTEMBER 15, 2016**

### **CALL TO ORDER – 1**

Chair Heitkamp called the meeting to order at 11:03 a.m. at the Anoka City Hall.

### **ROLL CALL– 2**

Commissioners present were: John LeTourneau, Ramsey; Kurt Ulrich, Ramsey; Jim Dickinson, Andover; Julie Trude, Andover; Eric Johnson, Champlin; and Bret Heitkamp, Champlin.

Commissioners absent and excused: Carl Anderson, Anoka; and Greg Lee, Anoka.

Others present included Karen George, Executive Director.

### **APPROVAL OF AGENDA – 3**

Motion was made by Johnson and seconded by Dickinson to approve the agenda as presented.

**6 ayes – 0 nays. Motion carried.**

### **ADMINISTRATIVE REPORTS – 4**

#### **4.1 Secretary**

- 4.1.1. Approval of meeting minutes from April 21, 2016**
- 4.1.2. Approval of meeting minutes from May 19, 2016**
- 4.1.3. Approval of meeting minutes from May 19, 2016 Work Session**

Motion was made by Trude and seconded by LeTourneau to approve the April 21, 2016 meeting minutes, May 19, 2016 meeting minutes, and May 19, 2016 worksession minutes as presented.

**6 ayes – 0 nays. Motion carried.**

#### **4.2 Treasurer**

##### **4.2.1. April/May/June Financial Reports**

Commissioner Dickinson provided a brief highlight of the financial reports.

Motion was made by Ulrich and seconded by Trude to accept the April, May and June Financial Reports.

**6 ayes – 0 nays. Motion carried.**

#### **4.3 Executive Director**

Ms. George provided a brief highlight of her report noting that the negotiations continue with the CenturyLink franchise and once that agreement is in place the community and governmental channels will become available to those customers. She stated that an elections tab has been added to the QCTV website along with election information on each of the tabs for the member city tabs on the website. She stated that the safety features were installed on the new mobile van and reported that the van is working great, noting that the graphics have also been applied and look great. She highlighted two recent promotions within the organizations, Dave Washburn who has accepted the position of part-time associate producer and Winter Kucharski who has accepted the position of full-time producer. She stated that QCTV swept the live and local awards presented by the Minnesota Association of Government Communication. She recognized and thanked the QCTV staff including Katherine Lenaburg. She provided information a pilot program sponsorship. She shared a compliment that was received on Twitter.

The Executive Director's Report was accepted.

### **GENERAL BUSINESS – 5**

#### **5.1 Personnel Policy Update**

Ms. George stated that the QCTV standards definition has been amended as previously discussed by the Personnel Committee.

Motion was made by Trude and seconded by Ulrich to approve the Personnel Policy update as presented.

**6 ayes – 0 nays. Motion carried.**

## **5.2 Liability Waiver**

Ms. George stated that the insurances have been updated for the organization and annually the Commission adopts the decision not to waive tort liability limits.

Motion was made by Trude and seconded by Dickinson to designate that QCCCC does not waive the monetary limits on municipal tort liability established by Minnesota Statutes 466.04.

**6 ayes – 0 nays. Motion carried.**

## **5.3 Landscape Project**

Ms. George presented a report requesting use of the capital funds to make improvements on the landscaping. She noted that although maintenance has been completed, after 15 years a complete refresh is needed for the site. She noted that the project could be approved as a whole or certain items could be removed as desired and briefly reviewed the project aspects. She noted that there are funds budgeted and three estimates were solicited.

Commissioner Trude stated that two of the companies use cedar mulch and the other uses dyed mulch. She asked the cost difference if the organization were to choose cedar.

Ms. George stated that the cedar mulch had a cost of \$75 per cubic yard. She noted that the low estimate did not result solely from the use of dyed mulch.

Commissioner Trude stated that perhaps the cedar mulch would be preferred.

Commissioner Johnson stated that he would also prefer use of cedar mulch.

Chair Heitkamp stated that there are differences in the scope of services and wanted to ensure that staff has walked through the scope of services to ensure the desires of the organization are being met. He asked if portions of the project should be broken up in another bid.

Ms. George stated that the project started with the current provider walking through the site and noting trees that needed removal near the air conditioner, which would then require screening as the trees were currently providing that screening. She noted that there are a lot of rodent issues in the winter because of the Junipers near the front and back entrances.

Commissioner Trude asked and received confirmation that Greenery Enterprises is the current landscaper.

Motion was made by Trude and seconded by Ulrich to award the landscape project to Greenery Enterprises at a cost not to exceed \$15,000.

Further discussion: Commissioner Ulrich asked if all the contractors met the specifications.

Ms. George confirmed that each of the vendors that provided estimates were given a walk through explaining the desired outcome.

Commissioner Ulrich asked if staff feels that the current vendor provides a good service for the money.

Ms. George stated that she does not have experience with the other vendors, noting that one of the other bidders did submit a proposal in the past to provide maintenance service but their cost was higher than the current provider. She stated that she has been pleased with the quality and quick response of the current provider, noting that the current provider also provides snow removal and makes suggestions that are beneficial to the organization.

Commissioner Johnson stated that his concern is within each of the subcategories they have not really met the work required information and provided an example. He stated that his concern would be that this was not an apples-to-apples comparison, noting that the change orders that will occur will change the costs.

Chair Heitkamp noted that there are not specific sizes for the plantings and he is not convinced that there was a solid scope of services that identified plants and plant sizes.

Commissioner Trude stated that the fencing listed was also different and she was unsure of the scope of service requested.

Ms. George noted that this was just an estimated project and not a formal bidding process. She stated that the concerns were outlined and they asked the companies how they would address those concerns.

Commissioner Dickinson stated that each vendor has their own vision and he prefers that the vision that had the least cost. He stated that there is a dollar amount and that will be adhered to.

Chair Heitkamp stated that Dogwoods can last a lifetime and asked if the proper maintenance has been done annually.

Ms. George stated that maintenance has been done but that area is used for snow storage and that snow pushing on them has caused damage over the past 15 years.

**4 ayes – 2 nays (Heitkamp and Johnson). Motion carried.**

**ADJOURN – 6**

Time of adjournment 11:32 a.m.

Respectfully submitted,

Reviewed for approval,

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Amanda Staple  
Recording Secretary  
*TimeSaver Off Site Secretarial, Inc.*

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Karen George  
Executive Director

## **MINUTES OF THE WORK SESSION OF SEPTEMBER 15, 2016**

### **CALL TO ORDER – 1**

Chair Heitkamp called the meeting to order at 9:30 a.m. at the Anoka City Hall.

### **ROLL CALL– 2**

Commissioners present were: John LeTourneau, Ramsey; Kurt Ulrich, Ramsey; Jim Dickinson, Andover; Julie Trude, Andover; Eric Johnson, Champlin; and Bret Heitkamp, Champlin.

Commissioners absent: Greg Lee, Anoka; and Carl Anderson, Anoka.

Others present included Karen George, Executive Director; Bob Vose, Commission Attorney; Patrick Haggerty, CenturyLink

### **AGENDA – 3**

Ms. George noted that she would provide an update on staffing under Other Business.

The agenda was approved as amended.

### **TOPIC FOR DISCUSS – 4**

#### **4.1 CenturyLink Franchise Review**

Ms. George provided background information on the process that has led to this step in the franchise negotiations.

Mr. Vose noted that Mr. Haggerty has been fantastic throughout this negotiation process. He stated that not only has he been great to work with he has also been a good advocate for QCTV on items in the negotiation process. He referenced his eight-page legal memorandum that was included in the Commission packet. He noted that although Comcast voiced their position through a letter in the beginning of this process, they have been silent for the

past year. He stated that CenturyLink has established a franchise or applied for a franchise in 42 other cities in the state and Comcast has not sued. He stated that even though Comcast has not made additional comments or taken legal action, the organization will still need to make findings. He provided background information on the process thus far and the "level playing field" required for competitive franchise agreements. He stated that it would be difficult to match the fee formula QCTV receives from Comcast because the CenturyLink customer base will be so different and will be rapidly changing and explained how the gross revenue fee was calculated, noting that the fee will be matching what QCTV receives from Comcast. He noted that in the future QCTV would likely prefer to use that fee calculation with Comcast as well. He explained how the service expansion for CenturyLink will occur along with their growing customer base and the different steps that will be required as certain benchmarks are reached. He stated that Comcast did not oppose that process for build out. He stated that CenturyLink has followed the necessary steps and holds the necessary licenses to provide service.

Commissioner Ulrich noted that Ramsey does not have a dense population and therefore the beginning build out of 15 percent would be fine in Ramsey. He referenced the City of Anoka that is almost completely developed and asked how the build out would be rolled out in that area.

Mr. Haggerty stated that he has maps which identify the areas CenturyLink intends to roll out first, and provided additional information on how Prism will be able to provide service not only to dense areas but also more rural areas.

Commissioner Ulrich asked how the cities would be able to publicize the new provider option and explain which areas would be eligible for the service and/or the timeline for other areas.

Mr. Haggerty stated that the maps are kept proprietary in order to keep the information from competitors. He stated that CenturyLink already has over 10,000 customers in the metro area and has only received 29 complaints, two of which were availability related. He provided information on the current customer base and retention.

Mr. Vose noted that there will be quarterly update meetings with CenturyLink and stated that the requirement will be made that service be technically made available to those residents that are able to be serviced and desire the service.

Mr. Haggerty provided additional information on the timeline and process that is followed to make service available to customers once service is available in that area, noting that it is a ten to 12-week process.

Commissioner Ulrich asked what is anticipated in terms of right-of-way impacts.



Mr. Haggerty stated that they are anticipating impacts to be minimal, noting that they tether fiber to the existing line running on the poles and then drop to the homes.

Commissioner Trude noted that method would allow the provider to service rural areas where you typically would not believe that service could be available.

Commissioner Ulrich asked if there are redundancies in the system, similar to power lines, to ensure service when there is damage to lines from storms.

Mr. Haggerty stated that they have lost service much more from backhoes to underground lines rather than tornado damage to aerial lines. He stated that the aerial lines are very strong.

Commissioner Trude stated that some customers use Comcast for one service and CenturyLink for another service and asked if there would be an issue.

Mr. Haggerty stated that they have separate infrastructure outside the home but can use the same wires inside the home but advised that there are wireless set-top boxes and noted that there would be other options as well for customers that want to utilize multiple providers.

Mr. Vose noted that there are clauses in the contract which address the right-of-way activity.

Mr. Haggerty stated that a majority of the work will not occur in the right-of-way and that type of activity would simply continue in the same manner it does today. He confirmed that the cities would be served consistently and the 15 percent benchmark for service area would be provided in each member city.

Mr. Vose anticipated that the percentage of customers that would be able to connect to service once available would far exceed 15 percent. He noted that some cities may start as high as 60 percent. He stated that each city would start where the starting mark would be and the benchmarks would begin from that point, rather than starting at 15 percent in each city.

Commissioner Johnson asked if each city would know the starting estimate for service area.

Mr. Haggerty confirmed that he would share those maps with the Commission today. He stated that CenturyLink currently does not have a commercial product as their content agreements do not provide for that. He stated that they can setup business accounts, such as an attorney that would like service at their

office but they would not be serving commercial units such as a sports bar. He noted that their primary focus would be residential.

Mr. Vose reviewed the highlights of the proposed contract.

Commissioner Ulrich asked how the revenue would be integrated into the budget process.

Ms. George replied that she would present a revenue neutral presentation for the 2017 budget as there is not enough activity in the market to make an estimation. She noted that after the third quarter in 2017 she will have a better idea if the CenturyLink customers are truly new customers or whether they have switched from Comcast.

Mr. Vose stated that there may be a temporary price war in the market between Comcast and CenturyLink and therefore the revenue may slightly drop or stay neutral during that time.

Mr. Haggerty stated that generally when a new provider enters a market there is a two percent increase in new customers overall as a majority of the customers are simply switching between providers.

Mr. Vose continued to review the contract highlights.

Ms. George reviewed the next steps in the process, noting that a resolution will come before the Commission in October and a recommendation would be made to each member city to adopt the franchise ordinance. She estimated that process would be completed by the end of the year and once that is completed CenturyLink can begin to provide service.

Commissioner Ulrich asked if there is a deadline for cities to approve the ordinance.

Ms. George estimated that would go before the member cities in November. She noted that a special meeting could be scheduled if the Commission desires the process to move faster.

## **4.2 Annual Programming Guidelines**

Ms. George distributed a memorandum with the programming guidelines. She identified the CenturyLink programming channels, noting that both SD and HD channels would be provided for each member cities with coordinating logos that would provide governmental programming. She stated that for Comcast the HD channels have been activated for the community channel and staff is working collaboratively with Comcast to rollout governmental channels for each member

city. She stated that staff is building the infrastructure to make programming available for sale by download, noting that there is a growing opportunity to provide that service as technology moves away from DVD use and towards digital copy. She asked that the Commission think about programming for sale by download for further discussion in the future.

Commissioner Trude stated that she is not sure that the organization should be pulling all content from YouTube.

Ms. George stated that the core service is to provide service to community members and YouTube is an international search engine. She noted that the highest ranking program on YouTube for QCTV is the antique program from over one year ago, explaining that the item comes up on the search engine for the site but is not actually being viewed.

Commissioner LeTourneau stated that he would be concerned that they would be pulling content that people from the community are watching but noted that they would need to determine if that content is actually being used by the community on that platform.

Commissioner Johnson stated that although the use of that platform is “free” there is a large amount of staff time needed to ensure that the data matches on multiple platforms. He stated that the organization is constantly producing new content and someone needs to go into the platforms to upload and manage that content. He noted that some people are actually going away from YouTube and using other platforms. He stated that if someone actually has to populate that data he would be in favor of pulling that content from YouTube. He stated that the focus should be on ensuring that the search criteria is pulling up the QCTV site rather than the YouTube site.

Commissioner Trude stated that there are educational components that she would want to see made available for free, such as broadcasts on pollinators and heartsafe communities.

Ms. George noted that the topic will be revisited after the first of the year.

#### **4.3 Other**

Ms. George provided an update on staffing reported that Technology Director Steve Ulrich has left the organization in great shape and advised that the redundancy planning assisted in ensuring that the organization is in good shape during this interim time. She noted that she is sorting out the position to determine the best way to fulfil the job duties.

Time of adjournment 10:55 a.m.

Respectfully submitted,

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Amanda Staple  
Recording Secretary  
*TimeSaver Off Site Secretarial, Inc.*

Reviewed for approval,

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Karen George  
Executive Director

# Quad Cities Communications Commission Balance Sheet Summary

As of July 31, 2016

	<u>Total</u>
<b>ASSETS</b>	
Current Assets	
Bank Accounts - QCTV	1,634,216.02
- PayPay acct	720.75
- US Bank Reserve	5,000.00
- Petty Cash	250.00
Accounts Receivable	0.00
Other current assets	0.00
<b>Total Current Assets</b>	<b>\$ 1,640,186.77</b>
Fixed Assets	0.00
<b>TOTAL ASSETS</b>	<b>\$ 1,640,186.77</b>
<b>LIABILITIES AND EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	14,261.89
Other Current Liabilities	31.23
<b>Total Current Liabilities</b>	<b>\$ 14,293.12</b>
Equity	1,625,893.65
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$ 1,640,186.77</b>

**Quad Cities Communications Commission**  
**Budget vs. Actuals: Budget 2016 - FY16 P&L**  
 January - December 2016

	Jul 2016				YTD			
	Actual	Budget	over Budget	% of Budget	Actual	Budget	over Budget	% of Budget
<b>Income</b>								
Duplication Revenue	77.67	208.00	(130.33)	37.34%	972.84	2,500.00	(1,527.16)	38.91%
Equipment Grant		0.00	0.00		55,870.85	0.00	55,870.85	
Franchise Fees		72,854.00	(72,854.00)	0.00%	255,868.56	874,248.00	(618,379.44)	29.27%
Interest Income	161.16	8.00	153.16	2014.50%	837.14	100.00	737.14	837.14%
Miscellaneous Income	6,143.46		6,143.46		26,084.40	0.00	26,084.40	
PEG Fee		36,427.00	(36,427.00)	0.00%	127,934.40	437,125.00	(309,190.60)	29.27%
<b>Total Income</b>	<b>6,382.29</b>	<b>109,497.00</b>	<b>(103,114.71)</b>	<b>5.83%</b>	<b>467,568.19</b>	<b>1,313,973.00</b>	<b>(846,404.81)</b>	<b>35.58%</b>
<b>Expenses</b>								
Accounting / HR Services	39.95	1,166.00	(1,126.05)	3.43%	6,593.73	14,000.00	(7,406.27)	47.10%
Ads/Promos/Sponsorships	441.58	570.00	(128.42)	77.47%	5,577.95	6,850.00	(1,272.05)	81.43%
Andover Capital Equipment		500.00	(500.00)	0.00%	78.98	6,000.00	(5,921.02)	1.32%
Announcers Fees	740.00	833.00	(93.00)	88.84%	4,445.00	10,000.00	(5,555.00)	44.45%
Anoka Capital Equipment	165.44	500.00	(334.56)	33.09%	1,116.07	6,000.00	(4,883.93)	18.60%
Audit		1,125.00	(1,125.00)	0.00%	13,075.00	13,500.00	(425.00)	96.85%
AV Equip / Repair / Supply / Software			0.00		636.74	0.00	636.74	
Bank Fees / CC Fees		41.00	(41.00)	0.00%	0.00	500.00	(500.00)	0.00%
Brand Apparel		166.00	(166.00)	0.00%	1,793.00	2,000.00	(207.00)	89.65%
Building - Cleaning	535.63	525.00	10.63	102.02%	5,069.89	6,300.00	(1,230.11)	80.47%
Building - Insurance		208.00	(208.00)	0.00%	1,370.00	2,500.00	(1,130.00)	54.80%
Building - Maintenance	322.64	583.00	(260.36)	55.34%	1,951.02	7,000.00	(5,048.98)	27.87%
Building - Supplies	86.16	166.00	(79.84)	51.90%	1,050.45	2,000.00	(949.55)	52.52%
Car Allowance	250.00	250.00	0.00	100.00%	1,750.00	3,000.00	(1,250.00)	58.33%
Cell Phone - Allowance	495.00	555.00	(60.00)	89.19%	3,405.00	6,660.00	(3,255.00)	51.13%
Champlin Capital Equipment	126.97	500.00	(373.03)	25.39%	636.37	6,000.00	(5,363.63)	10.61%
City Sewer & Water	280.65	216.00	64.65	129.93%	925.75	2,600.00	(1,674.25)	35.61%
Commission Expense		600.00	(600.00)	0.00%	600.00	7,200.00	(6,600.00)	8.33%
Computer Equip / Repair / Supply / Software			0.00		1,548.70	0.00	1,548.70	
Consulting Services		3,166.00	(3,166.00)	0.00%	9,250.00	38,000.00	(28,750.00)	24.34%
Contingency Fund		2,057.00	(2,057.00)	0.00%	0.00	24,690.00	(24,690.00)	0.00%

**Quad Cities Communications Commission**  
**Budget vs. Actuals: Budget 2016 - FY16 P&L**  
 January - December 2016

	Jul 2016				YTD			
	Actual	Budget	over Budget	% of Budget	Actual	Budget	over Budget	% of Budget
Duplication Expenses		83.00	(83.00)	0.00%	136.94	1,000.00	(863.06)	13.69%
Electric Service	1,750.62	1,596.00	154.62	109.69%	8,386.37	19,152.00	(10,765.63)	43.79%
Emp / Comm Appreciation		208.00	(208.00)	0.00%	10.78	2,500.00	(2,489.22)	0.43%
Equip/Repair/Supply/Software	1,221.61	3,817.00	(2,595.39)	32.00%	18,047.03	45,812.00	(27,764.97)	39.39%
Federal Unempl Expense	24.80	62.00	(37.20)	40.00%	507.33	750.00	(242.67)	67.64%
Health Insurance	5,103.12	5,814.00	(710.88)	87.77%	36,763.70	69,768.00	(33,004.30)	52.69%
Insurance - Deductibles		41.00	(41.00)	0.00%	0.00	500.00	(500.00)	0.00%
Insurance - Liability / Bonds		500.00	(500.00)	0.00%	3,717.00	6,000.00	(2,283.00)	61.95%
Lawn Service	455.92	375.00	80.92	121.58%	2,376.68	4,500.00	(2,123.32)	52.82%
Leg Lobbying - Do NOT Use		161.00	(161.00)	0.00%	0.00	1,940.00	(1,940.00)	0.00%
Legal Fees	1,530.00	2,500.00	(970.00)	61.20%	8,452.59	30,000.00	(21,547.41)	28.18%
Licenses and Permits		83.00	(83.00)	0.00%	0.00	1,000.00	(1,000.00)	0.00%
Meals	88.34	83.00	5.34	106.43%	88.34	1,000.00	(911.66)	8.83%
Memberships - NATOA / Others		460.00	(460.00)	0.00%	7,018.60	5,520.00	1,498.60	127.15%
Mileage	569.38	600.00	(30.62)	94.90%	3,560.91	7,200.00	(3,639.09)	49.46%
Miscellaneous Expenses		83.00	(83.00)	0.00%	0.00	1,000.00	(1,000.00)	0.00%
Natural Gas	37.91	316.00	(278.09)	12.00%	1,536.53	3,800.00	(2,263.47)	40.44%
Office Supplies / Equipment	441.20	416.00	25.20	106.06%	3,822.04	5,000.00	(1,177.96)	76.44%
Parking Lot Maintenance		266.00	(266.00)	0.00%	0.00	3,200.00	(3,200.00)	0.00%
Payroll Expenses (ADP/HSA)	362.90	491.00	(128.10)	73.91%	2,999.90	5,900.00	(2,900.10)	50.85%
PERA	2,263.64	3,248.00	(984.36)	69.69%	19,864.16	38,982.00	(19,117.84)	50.96%
Postage	8.30	108.00	(99.70)	7.69%	440.40	1,300.00	(859.60)	33.88%
Printing / Copy Services		83.00	(83.00)	0.00%	0.00	1,000.00	(1,000.00)	0.00%
Professional Development	494.20	1,416.00	(921.80)	34.90%	5,244.78	17,000.00	(11,755.22)	30.85%
Publications		41.00	(41.00)	0.00%	0.00	500.00	(500.00)	0.00%
Ramsey Capital Equipment	129.18	500.00	(370.82)	25.84%	903.76	6,000.00	(5,096.24)	15.06%
Sales Tax		41.00	(41.00)	0.00%	216.26	500.00	(283.74)	43.25%
Secretary Services		249.00	(249.00)	0.00%	787.35	2,992.00	(2,204.65)	26.32%
Snow Plowing Service		375.00	(375.00)	0.00%	1,016.25	4,500.00	(3,483.75)	22.58%
SS/Medicare Expense	2,874.54	3,728.00	(853.46)	77.11%	20,691.28	44,747.00	(24,055.72)	46.24%
State Unemploy Exp		208.00	(208.00)	0.00%	0.00	2,500.00	(2,500.00)	0.00%

**Quad Cities Communications Commission**  
**Budget vs. Actuals: Budget 2016 - FY16 P&L**  
 January - December 2016

	Jul 2016				YTD			
	Actual	Budget	over Budget	% of Budget	Actual	Budget	over Budget	% of Budget
STD / LTD / Life Insurance	479.03	626.00	(146.97)	76.52%	3,235.25	7,520.00	(4,284.75)	43.02%
Studio Sets		583.00	(583.00)	0.00%	0.00	7,000.00	(7,000.00)	0.00%
Subscription Services		1,334.00	(1,334.00)	0.00%	12,382.15	16,017.00	(3,634.85)	77.31%
Temp Staff Services		208.00	(208.00)	0.00%	0.00	2,500.00	(2,500.00)	0.00%
Vehicle - Equipment / Repair	7,339.60	833.00	6,506.60	881.10%	29,308.78	10,000.00	19,308.78	293.09%
Vehicle - Insurance		291.00	(291.00)	0.00%	1,759.00	3,500.00	(1,741.00)	50.26%
Vehicle - Maintenance / Gas	151.15	666.00	(514.85)	22.70%	3,222.36	8,000.00	(4,777.64)	40.28%
Wages - Full-time	32,840.00	38,748.00	(5,908.00)	84.75%	240,900.70	464,977.00	(224,076.30)	51.81%
Wages - Part-time	4,910.10	9,993.00	(5,082.90)	49.14%	30,980.45	119,922.00	(88,941.55)	25.83%
Waste Removal	85.97	100.00	(14.03)	85.97%	601.79	1,200.00	(598.21)	50.15%
Web / VOD / Int / CaTV / Phone	1,267.59	1,652.00	(384.41)	76.73%	7,403.61	19,830.00	(12,426.39)	37.34%
Work Comp Insurance		191.00	(191.00)	0.00%	0.00	2,300.00	(2,300.00)	0.00%
<b>Total Expenses</b>	<b>67,913.12</b>	<b>96,904.00</b>	<b>(28,990.88)</b>	<b>70.08%</b>	<b>537,256.72</b>	<b>1,163,129.00</b>	<b>(625,872.28)</b>	<b>46.19%</b>
<b>Revenues greater (less) than Expenditures</b>	<b>(61,530.83)</b>	<b>12,593.00</b>	<b>(74,123.83)</b>	<b>-488.61%</b>	<b>(69,688.53)</b>	<b>150,844.00</b>	<b>(220,532.53)</b>	<b>-46.20%</b>
ZCIP - Cargo Van	6,230.53				28,896.14			
ZCIP - Network Servers					7,258.90			
ZCIP - Truck					10,213.27			
	<u>6,230.53</u>				<u>46,368.31</u>			

Friday, Aug 19, 2016 11:20:47 AM PDT GMT-5 - Accrual Basis



# QCTV Bank Reconciliation

## July 2016

Beginning Balance - 4M Statement	1,700,475.30
Less: Cleared Checks/Withdrawals	(72,078.13)
Plus: 4M Fund Interest	161.16
Plus: Bank Deposits/Credits	6,647.53
<b>Bank Balance</b>	<b>\$1,635,205.86</b>
Book Balance	1,635,205.86
<b>Adjusted Book Balance</b>	<b>1,635,205.86</b>
<b>Difference:</b>	<b>\$0.00</b>

Completed by:     MK

## Quad Cities Communications Commission Reconciliation Report

### Quad Cities Commission, Period Ending 07/31/2016

Reconciled on: 08/18/2016 (any changes to transactions after this date aren't reflected on this report)

Reconciled by: Lee Brezinka

#### Summary

Statement Beginning Balance	1,700,475.30
Checks and Payments cleared	-72,078.13
Deposits and Other Credits cleared	+6,808.69
Statement Ending Balance	1,635,205.86
Uncleared transactions as of 07/31/2016	-989.84
Register Balance as of 07/31/2016	1,634,216.02
Uncleared transactions after 07/31/2016	367,421.41
Register Balance as of 08/18/2016	2,001,637.43

#### Details

##### Checks and Payments cleared

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
02/12/2016	Bill Payment	11191	Kurtis G. Ulrich	-40.00
03/25/2016	Bill Payment	11239	MAGC	-1,105.00
06/03/2016	Bill Payment	11318	Alliance for Community Media	-80.00
06/10/2016	Bill Payment	W/D	Minnesota State Retirement System	-570.00
06/24/2016	Bill Payment	11350	David S. Washburn	-60.00
06/24/2016	Journal	06B - 2016MK		-180.05
07/08/2016	Bill Payment	11364	Verus Corporation	-195.00
07/08/2016	Bill Payment	11363	U.S. Bank Corporate	-2,497.77
07/08/2016	Bill Payment	11362	Maza Technologies, LLC	-488.75
07/08/2016	Bill Payment	11361	Kennedy & Graven, Chartered	-680.00
07/08/2016	Bill Payment	11360	Joe G. Ruhland	-300.00
07/08/2016	Bill Payment	11359	Holiday Station	-166.48
07/08/2016	Bill Payment	11358	Comcast Cable	-20.41
07/08/2016	Bill Payment	W/D	PERA	-2,486.40
07/08/2016	Bill Payment	W/D	Minnesota State Retirement System	-570.00
07/08/2016	Bill Payment	11365	Anoka Area Chamber of Commerce	-250.00
07/08/2016	Journal	07A - 2016MK		-14,390.21
07/08/2016	Journal	07A - 2016MK		-5,234.76
07/08/2016	Journal	07A - 2016MK		-181.45
07/18/2016	Bill Payment	11380	Xcel Energy	-1,494.40
07/18/2016	Bill Payment	11378	LiveU Inc.	-536.40
07/18/2016	Bill Payment	11377	Huebsch	-33.07
07/18/2016	Bill Payment	11376	Greenery Enterprises, Inc	-290.18
07/18/2016	Bill Payment	11375	Crystal Welding, Inc.	-6,230.53
07/18/2016	Bill Payment	11374	Comcast Cable	-535.96
07/18/2016	Bill Payment	11373	Comcast 2	-474.76
07/18/2016	Bill Payment	11372	City of Champlin	-280.65
07/18/2016	Bill Payment	11371	CenterPoint Energy	-37.91
07/18/2016	Bill Payment	11369	Barna, Guzy & Steffen, LTD	-442.00
07/18/2016	Bill Payment	11368	B&H Photo-Video	-1,999.00
07/18/2016	Bill Payment	11366	ACE Solid Waste, Inc.	-85.97
07/22/2016	Bill Payment	W/D	Minnesota State Retirement System	-570.00
07/22/2016	Bill Payment	W/D	PERA	-2,527.68
07/22/2016	Bill Payment	11389	Verizon Wireless	-70.08
07/22/2016	Bill Payment	11388	The Lincoln National Life Ins. Co.	-479.03
07/22/2016	Bill Payment	11387	Preferred One Insurance Co.	-5,325.11
07/22/2016	Bill Payment	11386	Pierce	-210.00

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
07/22/2016	Bill Payment	11384	Markertek Video Supply	-422.32
07/22/2016	Bill Payment	11383	HealthEquity Inc.	-3.95
07/22/2016	Bill Payment	11382	City of Andover	-934.20
07/22/2016	Bill Payment	11381	Amazon	-614.52
07/22/2016	Journal	07B - 2016MK		-5,326.35
07/22/2016	Journal	07B - 2016MK		-181.45
07/22/2016	Journal	07B - 2016MK		-13,476.33
Total				-72,078.13

Deposits and Other Credits cleared

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
07/08/2016	Bill Payment	11357	Anoka Area Chamber of Commerce	0.00
07/18/2016	Deposit		Jeff Nelson	30.00
07/19/2016	Deposit		State of Minnesota	422.50
07/21/2016	Deposit		Tammy Whichard	15.00
07/21/2016	Deposit		Miscellaneous Customer	50.00
07/21/2016	Deposit		Anoka-Hennepin Sch Dist #11	3,400.00
07/21/2016	Deposit		League of MN Cities Insurance Trust	2,693.46
07/31/2016	Journal	07C - 2016MK		36.57
07/31/2016	Journal	07D - 2016MK		161.16
Total				6,808.69

**Additional Information**

Uncleared Checks and Payments as of 07/31/2016

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
07/16/2013	Bill Payment	10010	City of Anoka	-125.00
07/18/2016	Bill Payment	11379	Vividly Clean Inc.	-535.63
07/18/2016	Bill Payment	11370	Calvin P. Portner	-180.00
07/18/2016	Bill Payment	11367	Andrew Zachariason	-36.57
07/22/2016	Bill Payment	11385	Monarch Pest Control	-112.64
Total				-989.84

Uncleared Deposits and Other Credits as of 07/31/2016

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
08/21/2015	Bill Payment	10962	Anoka Area Chamber of Commerce	0.00
Total				0.00

Uncleared Checks and Payments after 07/31/2016

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
08/01/2016	Bill Payment	11393	James Childs	-260.00
08/01/2016	Bill Payment	11392	Holiday Station	-144.20
08/01/2016	Bill Payment	11391	Greenery Enterprises, Inc	-455.92
08/01/2016	Bill Payment	11390	Comcast Cable	-20.41
08/05/2016	Bill Payment	W/D	Minnesota State Retirement System	-570.00
08/05/2016	Bill Payment	W/D	PERA	-2,576.23
08/11/2016	Bill Payment	11415	Xcel Energy	-1,750.62
08/11/2016	Bill Payment	11414	Vividly Clean Inc.	-535.63
08/11/2016	Bill Payment	11413	Verus Corporation	-243.75
08/11/2016	Bill Payment	11412	U.S. Bank Corporate	-1,708.64
08/11/2016	Bill Payment	11411	Section 4 AAAA/5 AAAAAA	-280.00
08/11/2016	Bill Payment	11410	LiveU Inc.	-536.40
08/11/2016	Bill Payment	11409	Kurtis G. Ulrich	-80.00
08/11/2016	Bill Payment	11408	Kennedy & Graven, Chartered	-1,530.00

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
08/11/2016	Bill Payment	11407	Julie Trude	-80.00
08/11/2016	Bill Payment	11406	Joe G. Ruhland	-60.00
08/11/2016	Bill Payment	11405	James Dickinson	-40.00
08/11/2016	Bill Payment	11404	Huebsch	-200.20
08/11/2016	Bill Payment	11403	Greenery Enterprises, Inc	-236.01
08/11/2016	Bill Payment	11402	Eric Johnson	-40.00
08/11/2016	Bill Payment	11401	Comcast Cable	-545.46
08/11/2016	Bill Payment	11400	Comcast 2	-474.77
08/11/2016	Bill Payment	11399	CenterPoint Energy	-37.36
08/11/2016	Bill Payment	11398	Carl E. Anderson	-40.00
08/11/2016	Bill Payment	11397	Bret Heitkamp	-80.00
08/11/2016	Bill Payment	11396	Alpha Video & Audio Inc.	-6,786.49
08/11/2016	Bill Payment	11394	ACE Solid Waste, Inc.	-85.97
08/11/2016	Bill Payment	11395	Advanced Graphix Inc.	-1,056.88
Total				-20,454.94

Uncleared Deposits and Other Credits after 07/31/2016

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
08/03/2016	Deposit		Joan Crandall	18.95
08/03/2016	Deposit		Shirley LaPointe	18.95
08/03/2016	Deposit		James Reynolds	21.00
08/03/2016	Deposit		Comcast	81,278.00
08/03/2016	Deposit		Comcast	46,314.32
08/03/2016	Deposit		Comcast	69,410.48
08/03/2016	Deposit		Comcast	61,542.11
08/03/2016	Deposit		Comcast	40,639.04
08/03/2016	Deposit		Comcast	23,157.09
08/03/2016	Deposit		Comcast	34,705.32
08/03/2016	Deposit		Comcast	30,771.09
Total				387,876.35

**Quad Cities Communications Commission**  
**Balance Sheet Summary**  
As of August 31, 2016

	<b>Total</b>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Bank Accounts - QCTV</b>	1,943,533.65
- PayPay acct	301.50
- US Bank Reserve	5,000.00
- Petty Cash	250.00
<b>Accounts Receivable</b>	0.00
<b>Other current assets</b>	0.00
<b>Total Current Assets</b>	<b>\$ 1,949,085.15</b>
<b>Fixed Assets</b>	0.00
<b>TOTAL ASSETS</b>	<b>\$ 1,949,085.15</b>
 <b>LIABILITIES AND EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	8,035.43
<b>Other Current Liabilities</b>	31.25
<b>Total Current Liabilities</b>	<b>\$ 8,066.68</b>
<b>Equity</b>	1,941,018.47
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$ 1,949,085.15</b>

**Quad Cities Communications Commission**  
**Budget vs. Actuals: Budget 2015 - FY15 P&L**  
 January - December 2016

	Aug 2016				YTD			
	Actual	Budget	over Budget	% of Budget	Actual	Budget	over Budget	% of Budget
<b>Income</b>								
Duplication Revenue	52.90	208.00	-155.10	25.43%	1,025.74	2,500.00	-1,474.26	41.03%
Equipment Grant		0.00	0.00		55,870.85	0.00	55,870.85	
Franchise Fees	258,544.91	72,854.00	185,690.91	354.88%	514,413.47	874,248.00	-359,834.53	58.84%
Interest Income	259.37	8.00	251.37	3242.13%	1,096.51	100.00	996.51	1096.51%
Miscellaneous Income	21.00		21.00		26,105.40	0.00	26,105.40	
PEG Fee	129,272.54	36,427.00	92,845.54	354.88%	257,206.94	437,125.00	-179,918.06	58.84%
<b>Total Income</b>	<b>\$ 388,150.72</b>	<b>\$ 109,497.00</b>	<b>\$ 278,653.72</b>	<b>354.49%</b>	<b>\$ 855,718.91</b>	<b>\$ 1,313,973.00</b>	<b>-\$ 458,254.09</b>	<b>65.12%</b>
<b>Expenses</b>								
Accounting / HR Services	39.95	1,166.00	-1,126.05	3.43%	7,446.35	14,000.00	-6,553.65	53.19%
Ads/Promos/Sponsorships	20.00	570.00	-550.00	3.51%	5,597.95	6,850.00	-1,252.05	81.72%
Andover Capital Equipment		500.00	-500.00	0.00%	78.98	6,000.00	-5,921.02	1.32%
Announcers Fees	60.00	833.00	-773.00	7.20%	4,505.00	10,000.00	-5,495.00	45.05%
Anoka Capital Equipment	155.94	500.00	-344.06	31.19%	1,272.01	6,000.00	-4,727.99	21.20%
Audit		1,125.00	-1,125.00	0.00%	13,075.00	13,500.00	-425.00	96.85%
AV Equip / Repair / Supply / Software			0.00		636.74	0.00	636.74	
Bank Fees / CC Fees		41.00	-41.00	0.00%	0.00	500.00	-500.00	0.00%
Brand Apparel		166.00	-166.00	0.00%	1,793.00	2,000.00	-207.00	89.65%
Building - Cleaning	535.63	525.00	10.63	102.02%	5,605.52	6,300.00	-694.48	88.98%
Building - Insurance		208.00	-208.00	0.00%	1,370.00	2,500.00	-1,130.00	54.80%
Building - Maintenance	413.73	583.00	-169.27	70.97%	2,364.75	7,000.00	-4,635.25	33.78%
Building - Supplies	284.80	166.00	118.80	171.57%	1,335.25	2,000.00	-664.75	66.76%
Car Allowance	250.00	250.00	0.00	100.00%	2,000.00	3,000.00	-1,000.00	66.67%
Cell Phone - Allowance	495.00	555.00	-60.00	89.19%	3,900.00	6,660.00	-2,760.00	58.56%
Champlin Capital Equipment	181.44	500.00	-318.56	36.29%	817.81	6,000.00	-5,182.19	13.63%
City Sewer & Water	305.04	216.00	89.04	141.22%	1,230.79	2,600.00	-1,369.21	47.34%
Commission Expense	360.00	600.00	-240.00	60.00%	960.00	7,200.00	-6,240.00	13.33%
Computer Equip / Repair / Supply / Software			0.00		1,548.70	0.00	1,548.70	
Consulting Services	1,791.72	3,166.00	-1,374.28	56.59%	13,961.41	38,000.00	-24,038.59	36.74%
Contingency Fund		2,057.00	-2,057.00	0.00%	0.00	24,690.00	-24,690.00	0.00%

**Quad Cities Communications Commission**  
**Budget vs. Actuals: Budget 2015 - FY15 P&L**  
 January - December 2016

	Aug 2016				YTD			
	Actual	Budget	over Budget	% of Budget	Actual	Budget	over Budget	% of Budget
Duplication Expenses		83.00	-83.00	0.00%	136.94	1,000.00	-863.06	13.69%
Electric Service	1,636.76	1,596.00	40.76	102.55%	10,023.13	19,152.00	-9,128.87	52.33%
Emp / Comm Appreciation		208.00	-208.00	0.00%	10.78	2,500.00	-2,489.22	0.43%
Equip/Repair/Supply/Software	5,403.84	3,817.00	1,586.84	141.57%	23,450.87	45,812.00	-22,361.13	51.19%
Federal Unempl Expense	14.16	62.00	-47.84	22.84%	521.49	750.00	-228.51	69.53%
Health Insurance	5,103.12	5,814.00	-710.88	87.77%	41,866.82	69,768.00	-27,901.18	60.01%
Insurance - Deductibles		41.00	-41.00	0.00%	0.00	500.00	-500.00	0.00%
Insurance - Liability / Bonds		500.00	-500.00	0.00%	3,717.00	6,000.00	-2,283.00	61.95%
Lawn Service	691.93	375.00	316.93	184.51%	3,068.61	4,500.00	-1,431.39	68.19%
Leg Lobbying - Do NOT Use		161.00	-161.00	0.00%	0.00	1,940.00	-1,940.00	0.00%
Legal Fees	817.00	2,500.00	-1,683.00	32.68%	10,246.71	30,000.00	-19,753.29	34.16%
Licenses and Permits		83.00	-83.00	0.00%	0.00	1,000.00	-1,000.00	0.00%
Meals		83.00	-83.00	0.00%	88.34	1,000.00	-911.66	8.83%
Memberships - NATOA / Others		460.00	-460.00	0.00%	7,018.60	5,520.00	1,498.60	127.15%
Mileage	402.30	600.00	-197.70	67.05%	3,963.21	7,200.00	-3,236.79	55.04%
Miscellaneous Expenses		83.00	-83.00	0.00%	0.00	1,000.00	-1,000.00	0.00%
Natural Gas	74.75	316.00	-241.25	23.66%	1,611.28	3,800.00	-2,188.72	42.40%
Office Supplies / Equipment	486.49	416.00	70.49	116.94%	4,308.53	5,000.00	-691.47	86.17%
Parking Lot Maintenance		266.00	-266.00	0.00%	0.00	3,200.00	-3,200.00	0.00%
Payroll Expenses (ADP/HSA)	355.10	491.00	-135.90	72.32%	3,355.00	5,900.00	-2,545.00	56.86%
PERA	2,657.97	3,248.00	-590.03	81.83%	22,522.13	38,982.00	-16,459.87	57.78%
Postage		108.00	-108.00	0.00%	454.82	1,300.00	-845.18	34.99%
Printing / Copy Services	128.34	83.00	45.34	154.63%	128.34	1,000.00	-871.66	12.83%
Professional Development	2,357.04	1,416.00	941.04	166.46%	7,601.82	17,000.00	-9,398.18	44.72%
Publications		41.00	-41.00	0.00%	0.00	500.00	-500.00	0.00%
Ramsey Capital Equipment	129.18	500.00	-370.82	25.84%	1,032.94	6,000.00	-4,967.06	17.22%
Sales Tax		41.00	-41.00	0.00%	216.26	500.00	-283.74	43.25%
Secretary Services		249.00	-249.00	0.00%	787.35	2,992.00	-2,204.65	26.32%
Snow Plowing Service		375.00	-375.00	0.00%	1,016.25	4,500.00	-3,483.75	22.58%
SS/Medicare Expense	2,803.95	3,728.00	-924.05	75.21%	23,495.23	44,747.00	-21,251.77	52.51%
State Unemploy Exp		208.00	-208.00	0.00%	0.00	2,500.00	-2,500.00	0.00%

**Quad Cities Communications Commission**  
**Budget vs. Actuals: Budget 2015 - FY15 P&L**  
 January - December 2016

	Aug 2016				YTD			
	Actual	Budget	over Budget	% of Budget	Actual	Budget	over Budget	% of Budget
STD / LTD / Life Insurance	523.73	626.00	-102.27	83.66%	3,758.98	7,520.00	-3,761.02	49.99%
Studio Sets		583.00	-583.00	0.00%	0.00	7,000.00	-7,000.00	0.00%
Subscription Services	287.95	1,334.00	-1,046.05	21.59%	12,670.10	16,017.00	-3,346.90	79.10%
Temp Staff Services		208.00	-208.00	0.00%	0.00	2,500.00	-2,500.00	0.00%
Vehicle - Equipment / Repair	55.65	833.00	-777.35	6.68%	29,364.43	10,000.00	19,364.43	293.64%
Vehicle - Insurance		291.00	-291.00	0.00%	1,759.00	3,500.00	-1,741.00	50.26%
Vehicle - Maintenance / Gas	101.18	666.00	-564.82	15.19%	3,323.54	8,000.00	-4,676.46	41.54%
Wages - Full-time	34,563.81	38,748.00	-4,184.19	89.20%	275,464.51	464,977.00	-189,512.49	59.24%
Wages - Part-time	2,300.16	9,993.00	-7,692.84	23.02%	33,280.61	119,922.00	-86,641.39	27.75%
Waste Removal	85.97	100.00	-14.03	85.97%	687.76	1,200.00	-512.24	57.31%
Web / VOD / Int / CaTV / Phone	1,371.49	1,652.00	-280.51	83.02%	8,775.10	19,830.00	-11,054.90	44.25%
Work Comp Insurance		191.00	-191.00	0.00%	0.00	2,300.00	-2,300.00	0.00%
<b>Total Expenses</b>	<b>\$ 67,245.12</b>	<b>\$ 96,904.00</b>	<b>-\$ 29,658.88</b>	<b>69.39%</b>	<b>\$ 609,225.74</b>	<b>\$ 1,163,129.00</b>	<b>-\$ 553,903.26</b>	<b>52.38%</b>
<b>Revenues greater (less) than Expenditures</b>	<b>\$ 320,905.60</b>	<b>\$ 12,593.00</b>	<b>\$ 308,312.60</b>	<b>2548.29%</b>	<b>\$ 246,493.17</b>	<b>\$ 150,844.00</b>	<b>\$ 95,649.17</b>	<b>163.41%</b>
ZCIP - Cargo Van					28,896.14			
ZCIP - Network Servers					7,258.90			
ZCIP - Truck	1,056.88				10,213.27			
	<u>1,056.88</u>				<u>46,368.31</u>			

Monday, Oct 03, 2016 06:46:53 AM GMT-7 - Accrual Basis



## QCTV Bank Reconciliation *August 2016*

Beginning Balance - 4M Statement	1,635,205.86
Less: Cleared Checks/Withdrawals	(63,113.31)
Plus: 4M Fund Interest	259.37
Plus: Bank Deposits/Credits	388,310.60
<b>Bank Balance</b>	<b>\$1,960,662.52</b>
Book Balance	1,960,662.52
<b>Adjusted Book Balance</b>	<b>1,960,662.52</b>
<b>Difference:</b>	<b>\$0.00</b>

Completed by:     MK

**Quad Cities Communications Commission****Reconciliation Report****Quad Cities Commission, Period Ending 08/31/2016**

Reconciled on: 09/28/2016 (any changes to transactions after this date aren't reflected on this report)

Reconciled by: Lee Brezinka

**Summary**

Statement Beginning Balance	1,635,205.86
Checks and Payments cleared	-63,113.31
Deposits and Other Credits cleared	+388,569.97
Statement Ending Balance	1,960,662.52
Uncleared transactions as of 08/31/2016	-17,128.87
Register Balance as of 08/31/2016	1,943,533.65
Uncleared transactions after 08/31/2016	-25,315.07
Register Balance as of 09/28/2016	1,918,218.58

**Details**

## Checks and Payments cleared

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
07/18/2016	Bill Payment	11379	Vividly Clean Inc.	-535.63
07/18/2016	Bill Payment	11370	Calvin P. Portner	-180.00
07/22/2016	Bill Payment	11385	Monarch Pest Control	-112.64
08/01/2016	Bill Payment	11392	Holiday Station	-144.20
08/01/2016	Bill Payment	11391	Greenery Enterprises, Inc	-455.92
08/01/2016	Bill Payment	11390	Comcast Cable	-20.41
08/05/2016	Bill Payment	W/D	Minnesota State Retirement System	-570.00
08/05/2016	Bill Payment	W/D	PERA	-2,576.23
08/05/2016	Journal	08A - 2016MK		-5,484.72
08/05/2016	Journal	08A - 2016MK		-14,372.54
08/05/2016	Journal	08A - 2016MK		-184.05
08/11/2016	Bill Payment	11415	Xcel Energy	-1,750.62
08/11/2016	Bill Payment	11414	Vividly Clean Inc.	-535.63
08/11/2016	Bill Payment	11413	Verus Corporation	-243.75
08/11/2016	Bill Payment	11412	U.S. Bank Corporate	-1,708.64
08/11/2016	Bill Payment	11411	Section 4 AAAA/5 AAAAAA	-280.00
08/11/2016	Bill Payment	11410	LiveU Inc.	-536.40
08/11/2016	Bill Payment	11409	Kurtis G. Ulrich	-80.00
08/11/2016	Bill Payment	11408	Kennedy & Graven, Chartered	-1,530.00
08/11/2016	Bill Payment	11406	Joe G. Ruhland	-60.00
08/11/2016	Bill Payment	11405	James Dickinson	-40.00
08/11/2016	Bill Payment	11404	Huebsch	-200.20
08/11/2016	Bill Payment	11403	Greenery Enterprises, Inc	-236.01
08/11/2016	Bill Payment	11402	Eric Johnson	-40.00
08/11/2016	Bill Payment	11401	Comcast Cable	-545.46
08/11/2016	Bill Payment	11400	Comcast 2	-474.77
08/11/2016	Bill Payment	11399	CenterPoint Energy	-37.36
08/11/2016	Bill Payment	11398	Carl E. Anderson	-40.00
08/11/2016	Bill Payment	11397	Bret Heitkamp	-80.00
08/11/2016	Bill Payment	11396	Alpha Video & Audio Inc.	-6,786.49
08/11/2016	Bill Payment	11394	ACE Solid Waste, Inc.	-85.97
08/11/2016	Bill Payment	11395	Advanced Graphix Inc.	-1,056.88
08/19/2016	Bill Payment	11419	Trans-Alarm	-413.73
08/19/2016	Bill Payment	11418	HealthEquity Inc.	-3.95
08/19/2016	Bill Payment	11417	City of Champlin	-305.04
08/19/2016	Bill Payment	11416	Barna, Guzy & Steffen, LTD	-977.12
08/19/2016	Bill Payment	W/D	Minnesota State Retirement System	-570.00
08/19/2016	Bill Payment	W/D	PERA	-2,385.29

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
08/19/2016	Journal	08B - 2016MK		-12,406.09
08/19/2016	Journal	08B - 2016MK		-4,896.52
08/19/2016	Journal	08B - 2016MK		-171.05
Total				-63,113.31

## Deposits and Other Credits cleared

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
08/03/2016	Deposit		Joan Crandall	18.95
08/03/2016	Deposit		Shirley LaPointe	18.95
08/03/2016	Deposit		James Reynolds	21.00
08/03/2016	Deposit		Comcast	81,278.00
08/03/2016	Deposit		Comcast	46,314.32
08/03/2016	Deposit		Comcast	69,410.48
08/03/2016	Deposit		Comcast	61,542.11
08/03/2016	Deposit		Comcast	40,639.04
08/03/2016	Deposit		Comcast	23,157.09
08/03/2016	Deposit		Comcast	34,705.32
08/03/2016	Deposit		Comcast	30,771.09
08/24/2016	Deposit		Chad Costello	15.00
08/24/2016	Deposit		paypal	419.25
08/31/2016	Journal	08BC- 2016MK		259.37
Total				388,569.97

## Additional Information

## Uncleared Checks and Payments as of 08/31/2016

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
07/16/2013	Bill Payment	10010	City of Anoka	-125.00
07/18/2016	Bill Payment	11367	Andrew Zachariason	-36.57
08/01/2016	Bill Payment	11393	James Childs	-260.00
08/11/2016	Bill Payment	11407	Julie Trude	-80.00
08/31/2016	Bill Payment	11432	Verus Corporation	-438.75
08/31/2016	Bill Payment	11431	Verizon Wireless	-70.08
08/31/2016	Bill Payment	11430	The Lincoln National Life Ins. Co.	-523.73
08/31/2016	Bill Payment	11429	Presto Graphics	-128.34
08/31/2016	Bill Payment	11428	Preferred One Insurance Co.	-5,325.11
08/31/2016	Bill Payment	11427	Hoy Consulting	-1,791.72
08/31/2016	Bill Payment	11426	Greenery Enterprises, Inc	-455.92
08/31/2016	Bill Payment	11425	Comcast Cable	-20.41
08/31/2016	Bill Payment	11424	City of Andover	-827.09
08/31/2016	Bill Payment	11423	BizzyWeb, LLC	-2,919.69
08/31/2016	Bill Payment	11422	B&H Photo-Video	-990.99
08/31/2016	Bill Payment	11421	Anoka Area Chamber of Commerce	-20.00
08/31/2016	Bill Payment	11420	Amazon	-3,115.47
Total				-17,128.87

## Uncleared Deposits and Other Credits as of 08/31/2016

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
08/21/2015	Bill Payment	10962	Anoka Area Chamber of Commerce	0.00
Total				0.00

## Uncleared Checks and Payments after 08/31/2016

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
09/02/2016	Bill Payment	W/D	PERA	-2,714.99
09/02/2016	Bill Payment	W/D	Minnesota State Retirement System	-570.00

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
09/14/2016	Bill Payment	11444	Xcel Energy	-1,636.76
09/14/2016	Bill Payment	11443	Vividly Clean Inc.	-535.63
09/14/2016	Bill Payment	11441	Pierce	-741.19
09/14/2016	Bill Payment	11440	LiveU Inc.	-536.40
09/14/2016	Bill Payment	11439	Kennedy & Graven, Chartered	-765.00
09/14/2016	Bill Payment	11438	Huebsch	-33.07
09/14/2016	Bill Payment	11437	Gregory A. Zandlo	-180.00
09/14/2016	Bill Payment	11436	Comcast Cable	-535.96
09/14/2016	Bill Payment	11435	CenterPoint Energy	-37.39
09/14/2016	Bill Payment	11434	CDW Direct	-572.09
09/14/2016	Bill Payment	11433	ACE Solid Waste, Inc.	-85.97
09/15/2016	Bill Payment	11445	U.S. Bank Corporate	-3,804.76
09/16/2016	Bill Payment	W/D	PERA	-2,187.18
09/16/2016	Bill Payment	W/D	Minnesota State Retirement System	-570.00
09/19/2016	Bill Payment	11455	Maza Technologies, LLC	-2,065.63
09/19/2016	Bill Payment	11454	Ideal Advertising	-85.00
09/19/2016	Bill Payment	11453	Hoy Consulting	-3,105.81
09/19/2016	Bill Payment	11452	HealthEquity Inc.	-3.95
09/19/2016	Bill Payment	11451	Greenery Enterprises, Inc	-455.92
09/19/2016	Bill Payment	11450	Comcast 2	-474.78
09/19/2016	Bill Payment	11449	City of Champlin	-320.39
09/19/2016	Bill Payment	11448	BizzyWeb, LLC	-62.00
09/19/2016	Bill Payment	11447	Barna, Guzy & Steffen, LTD	-52.00
09/19/2016	Bill Payment	11446	Amazon	-3,213.20
Total				-25,345.07

## Uncleared Deposits and Other Credits after 08/31/2016

<u>Date</u>	<u>Type</u>	<u>Num</u>	<u>Name</u>	<u>Amount</u>
09/14/2016	Bill Payment	11442	U.S. Bank Corporate	0.00
09/28/2016	Deposit		Patty Thelen	15.00
09/28/2016	Deposit		Miscellaneous Customer	15.00
Total				30.00

## QCCCC Agenda Item

### 4.3 Executive Director's Report

**October 10, 2016**

**To:** Commissioners

**From:** Karen George, Executive Director

**Subject:** Executive Director's Report

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#### **CenturyLink negotiations**

Representatives of the commission and CenturyLink concluded franchise negotiations. The commission was presented with the draft franchise at a work session on September 15. The proposed agreement is scheduled for commission action on October 20.

#### **Election Programming**

As of July 1st, the QCTV web site has an Election 2016 tab and links to election programming within the QCTV website. Please use this page link to promote the election coverage on your city web sites and social media. The city candidate forums will air on city channel 16, all other election coverage will play on channel 15. Please note that QCTV does not sponsor candidate forums nor does the organization produce debates.

All of the candidate forums scheduled have been videotaped and in playback rotation on the channels. The election programming is available on the QCTV web site for watching on demand.

#### **News staff announced**

QCTV is proud to announce the promotion of Andy Zachariason.

Please welcome Andy Zachariason to the role of part-time Associate Producer at QCTV. Andy is a graduate of St. Cloud State University with a degree in Film Studies and Mass Communication. He has experience working on commercials and documentaries in the Twin Cities market as a freelancer. Andy has served as a part-time production assistant working on QCTV mobile van productions for the past year. He will continue to work on van productions and will be producing coverage of government meetings and producing stories for News and Views and The Sheriffs Show. Congratulations, Andy!

### **2017 Budget planning**

Operating budget development is underway with staff and the Budget Committee. The Budget Committee will review the final proposed budget in October and it will be before the commission for action at the November meeting.

### **New studio desk**

The new modular studio desk set arrived in September. It is quite versatile with seven interchangeable tops and two heights. Here is a photo of a recent studio shoot using the new set desk:



### **Facebook Live**

Staff has been using Facebook Live for short, promotional videos of QCTV programming. Our sports coverage now includes high-impact video recap of each game posted on the Facebook page with great success – one game recap video post garnered 1,008 people reached and 333 unique views and an in-studio live promo of QC Cooks reached 1,444 people and had 426 views! Taylor Johnson has successfully tested using Facebook Live as an additional channel for live event/sport coverage, and live streaming of the community channel. This is an emerging innovative use of technology we will continue to implement and review for outcomes.

### **Technology Manager recruitment**

The position description was reviewed and staff researched the option of a part-time position. It was determined that a fulltime position was desired for meeting future needs of the organization. The fulltime position of Technology Manager has been posted for recruitment. Interviews are scheduled for mid-October.

### **Comcast Electronic Program Guide new service provider**

The Comcast electronic program guide service provider changed from ROVI to Gracenote. Staff has been working for a smooth transition to the new company.

### **NATOA conference**

Karen George attended the National Association of Telecommunications Officers and Advisers conference.

### **Monthly reports**

Please note that the statistical reports will be provided quarterly in the future.

## **Customer comments**

### **Anoka First Day of Issue Stamp show:**

All my thanks to you and your fabulous crew as well. I have a blast and learned a lot. Peter Nowacki, USPS, Minneapolis and show host

### **Rum River Rescue show:**

I think it turned out really well! Thank you for your time and the coverage.  
Kim Thommes

### **Ramsey Happy Days parade:**

From Twitter: Great job on the Ramsey Days Parade! Thank you!  
Thanks Katherine it was a lot of fun! You and your team do a great job, appreciate you having us there to be part of it.  
Scott Siebert

### **Recycle PSA:**

This is adorable. Thank you so much! We will put it to use and I will share it with our leads at Anoka County – they will appreciate it.

Pam Bowman

Wow, love this!!!

Vicki Violet

### **Andover Bowling Team coverage:**

Thanks! I enjoyed watching!

Paul Dudley

### **Special election program Get Ready to Vote:**

Thanks a million. QCTV is a dream to work with!

Geri Nelson, ABC League of Women Voters

**Action Requested:** None.

## QCCCC Agenda Item

### 4.3.1 Operations Report

**October 5, 2016**

**To:** Karen George, Executive Director

**From:** Katherine Lenaburg, Operations Manager

**Subject: Operations Update**

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With election season in full swing we have been busy producing candidate forums. Working with the League of Women Voters- ABC, we covered the Champlin Mayoral and City Council forums as well as Senate District 36 and House District 36A. In Anoka we covered the five districts of Anoka Conservation District Board. The North Metro Mayor's Association sponsored forums for Senate District 35, House District 35A and 35B as well as Senate District 36 and House District 36A and House District 36B. We will continue with these in October and have picked up several more done by our sister stations. They are all on our website under the "Election" tab and playing on our channels.

The Fall Sports season is underway and we have been producing live coverage of volleyball, soccer, and football. We completed three episodes of our new show called "At The Half" that features lesser known sports like bowling and swimming as well as stories on the cheerleaders, marching bands, and dance teams. We also are using a sideline reporter for some games and that is working well.

We produced live coverage of The Happy Days Parade in Ramsey.

We produced a pilot for a new animal show called "Rum River Rescue" and will be doing another program as well.

"Save Your Ash" is a show we did featuring the Emerald Ash Borer disease. Our guests included several local and state officials who are experts on how to prevent and deal with the disease which has been found locally.

Working with the League of Women Voters we did a show called "A Strong Start to a new Life" about immigration.



Our “Live and Local” series continued with “Live and Local: Anoka- Putting its Stamp on Halloween”. This show is all about the first day issue of the Jack O’ Lantern Stamp in Anoka. Our show was carried live on the United States Post Office’s Facebook page.

We also did an experiment with a one camera live shoot via our LiveU for a local high school marching band competition called “Music in Motion”. This worked well for this production but you cannot have graphics in this type of production so we added them in post- production for playback of the show.

In terms of promotion, we produced a special episode of “What’s New at the Q” that features our mobile production truck as well as testimonials from several of our production assistants. We also did “Shout Outs” at the Andover football game and Happy Days Parade. We produced other promos to promote our programming including one on government programming and our new show called “Rum River Rescue”. We also produced a PSA called “Water Bottle” that promotes water conservation. “We are QCTV” is a promo we did featuring staff members and our recent programming. We also did five new “Slow TV’s” and several promos for local sports and “Live and Local”.

Regular programs produced include: “News and Views”, “The Chamber Show”, “Public Safety Talk” “District Court” and “It’s Your History”. We produced live coverage of several government meetings.

We received three awards at the recent NATOA conference. Third Place in the Live Sports Event category for “Champlin Park Boys Basketball Section 5AAAA Semi Final”, Honorable Mention for “Best of QCTV” in the Programming Excellence category, and First Place for Municipal Channel Promotion for a promo called “Pocket Pals.”

**Action: None**

## QCCCC Agenda Item

### 5.1 CenturyLink Franchise Agreement

**October 10, 2015**

**To:** Commissioners

**From:** Karen George, Executive Director

**Subject:** CenturyLink Franchise Agreement

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The commission reviewed the legal, financial, and technical qualifications of CenturyLink at a recent work session. Legal counsel report and recommended action is enclosed. Attached are the franchise summary, legal review, franchise agreement, and the franchise agreement resolution.

**Action Requested:**

Approve the franchise agreement between Quad Cities Cable Communications Commission and CenturyLink.

Direct staff to present the commission's action and city resolutions approving the Quad Cities Cable Communications Commission franchise agreement with CenturyLink.

**QCCCC Work Session Item**  
**CenturyLink Franchise Summary**

**September 12, 2016**

**To:** Commissioners

**From:** Robert J. V. Vose, Attorney, Kennedy & Graven, Chartered

**Subject:** CenturyLink Franchise Summary

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The Quad Cities Cable Communications Commission, on behalf of the member cities Andover, Anoka, Champlin, and Ramsey, has accepted from CenturyLink (parent Company Qwest Broadband Services, Inc.) an application to provide cable television services in the Quad Cities service area. Commission staff and legal counsel have engaged in negotiations with CenturyLink officials crafting a draft franchise agreement that encompasses like features and obligations as the Comcast franchise agreement. The proposed CenturyLink franchise will allow market competition offering cable television services currently serviced by incumbent operator Comcast.

This memo outlines the terms of the drafted franchise agreement to be presented at the September 15, 2016 commission work session.

### **Level Playing Field**

#### **Franchise Fees**

CenturyLink required to pay a franchise fee of 5% of its Gross Revenues. Includes language address “bundling” and interest (10% per annum) on underpayments.

#### **Public, Educational, and Governmental Access Requirements**

##### *Number of Access Channels*

CenturyLink will provide 7 Access Channels (comparable to number of Access Channels as Comcast).

##### *Format of Access Channels*

CenturyLink will provide all Access Channels in HD if the City sends them HD format (exceeds Comcast’s commitment).

### *Electronic Programming Guide*

CenturyLink will provide EPG capabilities to each member city (similar to Comcast).

### *Channel Placement*

CenturyLink will make all Access Channels accessible at Channel 40 through the “Quad Cities Mosaic.”

### *PEG Support*

CenturyLink will pay a PEG Fee in support of the Access Channels of 3% of gross cable revenues (equivalent to the amount of PEG funding Comcast passes through to its subscribers).

## **Area Served**

The Franchise Area is the entire boundary of each member city. Market success-based expansion.

## **Build-Out**

### **Complete Build-Out Goal**

Goal is to Build-Out each member city entirely over a five (5) year term based on market success, with significant investment targeted to areas below the median income.

### **Initial Minimum Built-Out Commitment**

15% of each member city over two years:

- Best effort to complete the initial deployment in a shorter period of time.
- Equitable deployment to households throughout each member city.
- Must include a significant number of households below the median income.
- CenturyLink permitted to serve more households.

### **Quarterly Meetings**

Starting this year, CenturyLink must meet with the Commission and show:

- Number of households capable of being served and actually served.
- Compliance with anti-redlining requirements.
- Maps and documentation showing exactly where within the City the Grantee is currently providing cable service.

### **Additional Build-Out Based on Market Success**

Build-Out commitment increases if penetration rate is at least 27.5% in the areas that it is offering service.

- Example: If offering service to 60% of the member city and CenturyLink has penetration of 30% of that area, then the Build-Out commitment will increase 15% to 75% of the member city.
- Additional Build-Out commitment continues until all households served.

## **Complimentary Internet**

CenturyLink will provide Internet service to the commission and up to 5 static IP addresses at the highest speed capable at the location.

## **Twin Cities Metro-Wide PEG Interconnect**

CenturyLink will provide the ability for all cities in the Metro Area to share live programming.

- For example, if Anoka High School is playing a game against Coon Rapids High School, the Commission will be able to take the live feed being produced in Coon Rapids and play it over the channel in Anoka.
- Opportunity for collaborative programming, benefiting local and regional subscribers.

## **Complimentary Service**

All City Halls and all other institutions receiving free Comcast service may receive complimentary Prism TV service. Member cities are responsible for the inside wiring. Will not duplicate Comcast service except at City Hall.

## **Comparison to other terms in Comcast Franchise**

### **Substantially Similar**

CenturyLink Franchise and Comcast Franchise are identical in most respects.

### **Term**

CenturyLink's Franchise term is 10 years. Comcast's term was 15 years, which has been extended.

### **Customer Service**

CenturyLink has committed to having a customer service office within the Commission area. All other obligations same as Comcast.

### **Indemnification of the City.**

CenturyLink has an additional indemnification commitment that Comcast does not have.

### **Access Channel Commitments**

CenturyLink may provide more channels in HD than Comcast. PEG support may be used in Commission's discretion. PEG support of 3% is expected to equal or exceed Comcast's somewhat differing calculation.

### **Cable Service to Public Buildings**

CenturyLink will provide service to up to 7 boxes at City Halls and 5 additional "wild card" set top boxes and up to 3 at all other government buildings with service and equipment. Comcast's commitment is more limited.

### **Penalties/Liquidated Damages**

CenturyLink Franchise requires \$100,000 performance bond and \$25,000 letter of credit.

### **Build-Out**

CenturyLink Franchise has a reasonable build-out commitment based on market success.  
Comcast service obligation based on housing density.

### **Twin Cities Metro Interconnect**

The CenturyLink Franchise requires CenturyLink to provide a metro-wide interconnect for the sharing of PEG programming. This is different than Comcast's commitments related to PEG and the Institutional Network.

### **Complimentary Internet Service**

CenturyLink has also agreed to provide complimentary Internet services to one location.  
Comcast does not have such a commitment.

**Kennedy**

**&**

**Graven**

**CHARTERED**

470 US Bank Plaza  
200 South Sixth Street  
Minneapolis MN 55402

Robert J.V. Vose  
(612) 337-9275 telephone  
(612) 337-9310 fax  
rvose@kennedy-graven.com

## **MEMORANDUM**

**DATE:** September 9, 2016  
**TO:** Karen George, Quad Cities Cable Communications Commission  
**FROM:** Bob Vose  
**RE:** CenturyLink Franchise

This Memorandum addresses the cable television franchise application submitted by Qwest Broadband Services, Inc. d/b/a CenturyLink (“CenturyLink”). CenturyLink is a wholly-owned subsidiary of CenturyLink, Inc. a publicly-traded, Fortune 500 company headquartered in Louisiana.

### **Background**

In 2010, CenturyLink, Inc. merged with Qwest Communications International, Inc. (“Qwest”) acquiring all of Qwest’s subsidiary companies and operations. This included Qwest Communications Services, Inc. and its subsidiary Qwest Corporation, a large local exchange telephone service provider in Minnesota. Qwest Corporation, the applicant’s affiliate, owns and operates telephone facilities in the member cities subject to local rights-of-way ordinances in addition to other applicable local, state and federal laws.

CenturyLink seeks authorization to provide cable service in the member cities over its affiliate’s telephone network. Minnesota Statutes, Chapter 238 (“Chapter 238”), establishes the process for considering issuance of cable franchises. As required by Chapter 238, the Commission published notices of intent on the member cities’ behalf to initiate the process for considering issuance of franchises. CenturyLink filed an application dated June 3, 2015.

Chapter 238 requires a public hearing affording reasonable notice and an opportunity for all interested parties to be heard regarding any franchise application.<sup>1</sup> Any franchise that is ultimately issued must include:

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<sup>1</sup> Minn. Stat. § 238.081, Subd. 6.

a provision that the franchisee’s technical ability, financial condition, and legal qualification were considered and approved by the franchising authority in a full public proceeding that afforded reasonable notice and a reasonable opportunity to be heard;<sup>2</sup>

The public hearing requirement is significant because cable franchising is a “quasi-judicial” process.<sup>3</sup> Among other things, the public hearing affords an incumbent cable operator the opportunity to present evidence and argument concerning its existing franchise obligations or an applicant’s qualifications to receive a competitive franchise.

The Commission gave the required notice and subsequently conducted the statutorily-required public hearing on June 18, 2015. At the hearing, representatives for CenturyLink gave a presentation describing the company’s qualifications and plans to offer “Prism” video service. The incumbent cable provider, Comcast, provided written comments dated June 17, 2015 concerning CenturyLink’s application.

### **Current Status**

We have completed review of CenturyLink’s application and franchise negotiations with the company. As explained below, CenturyLink’s application can be approved and the proposed franchise(s) may be adopted.

## **ANALYSIS**

### **1. Level Playing Field Law**

CenturyLink’s application includes a multi-page discussion about federal preemption of Minnesota’s level playing field law, Minn. Stat. § 238.08 (“LPF law”), which provides:

[n]o municipality shall grant an additional franchise for cable service for an area included in an existing franchise on terms and conditions more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or (3) franchise fees.<sup>4</sup>

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<sup>2</sup> Minn. Stat. § 238.084, Subd. 1(l).

<sup>3</sup> *In re Application of Dakota Telecommunications Group*, 590 N.W.2d 644, 647-8 (Minn. App. 1999) (citing, *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 414-15 (Minn. 1981)).

Quasi-judicial proceedings involve an investigation into a disputed claim that weighs evidentiary facts, applies those facts to a prescribed standard, and results in a binding decision. In granting a cable television franchise, the Cable Act requires that franchise proposals contain specific information and a public hearing be held affording reasonable notice and opportunity to be heard. Minn. Stat. § 238.081, subs. 4, 6. This procedure involves testimonial and documentary evidence, and results in a binding decision.

Id. (case citations omitted).

<sup>4</sup> Minn. Stat. § 238.08, Subd. 1(b).



CenturyLink suggests that the LPF law was preempted by orders issued by the Federal Communications Commission (FCC). In its responsive comments, Comcast disputes CenturyLink’s argument.<sup>5</sup>

In 2007, the FCC issued an Order and Notice of Proposed Rulemaking addressing competitive cable franchising.<sup>6</sup> The 621 Order addresses the implementation of Section 621(a)(1) of the federal Cable Act.<sup>7</sup> Among other things, Section 621 prohibits franchising authorities from unreasonably refusing to award competitive cable franchises.<sup>8</sup> The 621 Order was challenged and upheld.<sup>9</sup> In January 2015, the FCC reaffirmed the 621 Order on reconsideration.<sup>10</sup>

The FCC found that both traditional cable providers and telephone companies wish to offer customers “triple play” services-- voice, high-speed Internet access, and video. When a phone company enters the cable market, the FCC has determined that competition for delivery of bundled services will benefit consumers by driving down prices and improving the quality of services. The FCC has also concluded that the circumstances for competitive entry to the cable market are considerably different than existed when the incumbent cable operators obtained their franchises. Incumbent cable operators were initially the sole providers of cable and gained a high percentage of potential subscribers in the local market. A second entrant is less likely, or even unlikely, to gain the same percentage of subscribers. The competitor faces greater “financial risk” and “uncertainty” than did the incumbent when it entered the market.<sup>11</sup>

As a result, the FCC found that level playing field requirements generally, and system build-out requirements specifically, can be an obstacle when phone companies seek to deploy competitive video services. Although phone companies already have facilities deployed, they still must upgrade existing plant to enable the provision of video service which often requires significant investment.<sup>12</sup>

Based on this reasoning, the 621 Order restricted local level playing field requirements and prohibited imposition of unreasonable build-out requirements on competitors. The FCC further found that the imposition of “up-front” PEG and I-Net support obligations, or obligations that

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<sup>5</sup> CenturyLink has received similar franchises from dozens of Minneapolis-St. Paul metro cities in which Comcast is the incumbent cable operator. Comcast made similar comments in many of these cities, however, Comcast has not appealed the grant of such franchises to CenturyLink. The deadline for such litigation has apparently expired.

<sup>6</sup> *In the Matter of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, MB Docket No. 05-311, (rel. March 5, 2007) (the “621 Order”).

<sup>7</sup> 47 U.S.C. § 541(a)(1).

<sup>8</sup> 47 U.S.C. § 552(a)(2). Federal law also provides that a local franchising authority: “shall allow . . . [an] applicant’s cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area . . . “ 47 U.S.C. § 541(a)(4). Federal law further prohibits redlining, stating: “[i]n awarding a franchise or franchises, a franchising authority shall ensure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.” 47 U.S.C. § 541(a)(3).

<sup>9</sup> *Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008).

<sup>10</sup> *Order on Reconsideration* (rel. Jan. 21, 2015).

<sup>11</sup> See generally, 621 Order at ¶ 28.

<sup>12</sup> See generally, 621 Order at ¶ 35.

exceed the incumbent's obligations, are unreasonable, while pro rata sharing arrangements are reasonable.

However, the 621 Order does not appear to preempt Minnesota's LPF law. The 621 Order did not "preempt state law or state level franchising decisions . . ." <sup>13</sup> Rather, the FCC "expressly limit[ed] . . . [its] findings and regulations in this Order to actions or inactions at the local level where a state has not specifically circumscribed the LFA's authority." <sup>14</sup> Local requirements are preempted to the extent they conflict with the FCC's guidance in the 621 Order and are not "specifically authorized by state law." <sup>15</sup>

The LPF law is a "state law or state level franchising decision" under the 621 Order. The LPF law prohibits local action by mandating that municipalities refrain from granting certain more beneficial terms in "an additional franchise" if there is "an existing franchise." CenturyLink has not explained how the LPF law constitutes a "local franchising action" that is preempted rather than a "state law" that is expressly preserved. If, however, Comcast's franchise were to contain independent level playing field obligations, the 621 Order would preempt such provisions as they are not "specifically authorized" by the LPF law or other state law.

## 2. Compliance with Level Playing Field Law

The franchise terms negotiated with CenturyLink comply with the LPF law. <sup>16</sup> The terms regarding: (1) the area served; (2) public, educational, or governmental access requirements; and (3) franchise fees, are as follows:

### Service Area

CenturyLink proposes a "market success" approach to cable service deployment. Specifically, CenturyLink would make service available to at least 15% of each city's households during the first 2 years after issuance of franchises, and make best efforts to complete such deployment faster. CenturyLink will further be required to offer service to any and all households capable of receiving such service initially. System technical information disclosed to commission representatives suggests that the percentage of households able to receive service initially may materially exceed 15% of each member's households. CenturyLink's deployment must be equitable and must include households below the median income.

To track compliance, CenturyLink must meet each quarter with the commission to present maps and other information showing:

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<sup>13</sup> 621 Order at ¶ 126.

<sup>14</sup> Id. at ¶ 1, n. 2.

<sup>15</sup> Id. at ¶ 126.

<sup>16</sup> The LPF law would likely be interpreted to require "similar," not identical, franchise obligations. See, *WH Link v. City of Otsego*, 664 N.W.2d 390, 396 (Minn. Ct. App. 2003); *Cable TV Fund 14A v. City of Naperville*, 1997 U.S. Dist. LEXIS 7336, \* 37-38 (N.D. IL 1997); *Comcast Cablevision of New Haven, Inc. v. Connecticut Department of Public Utility Control*, 1996 Conn. Super. LEXIS 2927, \*7 (1996); and *United Cable Television Corporation v. Connecticut Department of Public Utility Control* 1994 Conn. Super. LEXIS 2222 (1994).

- All households in the City;
- The number and location of households able to receive service;
- The number and location of households actually taking service, and
- Comparative information showing the change/increase in service availability from prior quarters.

Thereafter, if CenturyLink actually provides service to at least 27.5% of the households it is capable of serving, the service obligation increases to include an additional 15% of the total households which must be activated within 2 years. CenturyLink must try to complete deployment within a shorter period of time. This additional build-out continues until every household is served.

CenturyLink's approach is consistent with the 621 Order which suggested that it would be reasonable for a local franchising authority to consider benchmarks requiring a new entrant to increase its build-out after a reasonable time, taking into account the new entrant's market success or market penetration.<sup>17</sup> Comcast noted that its franchise requires service availability everywhere with sufficient development density (35 homes per cable mile overhead; 40 homes per cable mile buried). Comcast did not indicate what areas this requires be served, what areas it actually serves, or either the locations of homes passed and customers served or the overall percentage of households served. Thus, there is no basis to conclude that CenturyLink's proposed obligations violate the LPF law.

In addition to the LPF law, Chapter 238 requires that "initial franchises" include a schedule showing:

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(3) that construction throughout the authorized franchise area must be substantially completed within five years of the granting of the franchise;<sup>18</sup>

CenturyLink's application seemingly asserts that this requirement is also preempted. Comcast's responsive comments do not raise a question or concern about CenturyLink's compliance with the 5-year substantial completion requirement. Comcast's comments refer only to the LPF law.

CenturyLink's proposed franchise provides (4.3.1(i)) that the "Grantee aspires to provide Cable Service to all households in the City within five (5) years of the Effective Date." The Franchise also contains several provisions indicating that it is granted pursuant to

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<sup>17</sup> 621 Order, ¶ 89.

<sup>18</sup> Minn. Stat. § 238.084, Subd. 1(m).

applicable law, and that the Grantee must comply with all provisions of applicable law.<sup>19</sup>

Finally, CenturyLink will be required to indemnify the cities and commission generally, but the company must also enter a separate indemnification agreement covering any claim arising out of the grant of a franchise to CenturyLink. This additional indemnification:

includes any claims by the incumbent cable operator against the City that the terms and conditions of this Franchise are less burdensome than the incumbent's franchise, or that this Franchise does not satisfy the requirements of applicable state law(s).

Accordingly, the commission and cities are legally protected from claims associated with CenturyLink's "market success" build out obligations.

#### PEG Access

In all material respects, CenturyLink has agreed to PEG access requirements that equal or exceed the PEG support provided by Comcast. CenturyLink has agreed to pay PEG support in the amount of 3% of its gross revenues. This arrangement mimics the Comcast's current PEG funding arrangement. Comcast's arrangement is, however, somewhat more complicated.

CenturyLink will also provide the same number of PEG channels (7), but will additionally offer such channels in high definition (HD) digital format to the extent the programming is provided in that format. CenturyLink will agree to other appropriate PEG technical quality standards. CenturyLink will also provide fiber connections and facilities to replace or augment I-Net connections previously provided by Comcast, some of which are failing.

#### Franchise Fees

CenturyLink will agree to a 5% franchise fee based on language that largely mirrors the language in Comcast's franchise. The definition of "gross revenues" is identical and CenturyLink's franchise will language recently negotiated with Comcast to clarify how franchise fees are calculated where cable service revenues subject to the fee are bundled with telephone or internet access services not subject to the fee at a discount. The language requires that the discount be allocated fairly in proportion to the cost for the services individually.

In sum, the franchise terms negotiated with CenturyLink comply with the LPF law.

### **3. CenturyLink's Qualifications**

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<sup>19</sup> See e.g., Section 2.2.1.

CenturyLink's application includes information addressing the company's financial, technical, and legal qualifications and those of its ultimate corporate parent, CenturyLink, Inc. Chapter 238 does not establish standards for reviewing information submitted in relation to a franchise applicant's qualifications. Any franchise issued is simply required to reflect that the franchisee's qualifications have been considered and approved after a public hearing.

Municipalities across the country generally review a cable franchise applicant's financial, technical and legal qualifications. In the 621 Order, the FCC indicated that where a local exchange telephone company that has received the required telephone authority from the relevant state agency is seeking a cable franchise, municipalities should not spend a significant effort evaluating the fitness of such applicant to access public rights-of-way to provide cable service.<sup>20</sup> CenturyLink's affiliate has received a certificate of public convenience and necessity from the Minnesota Public Utilities Commission.

No challenge to CenturyLink's qualifications was raised by Comcast or any other party. A summary of the company's qualifications follows:

#### Legal

CenturyLink is authorized to do business in the state of Minnesota.<sup>21</sup> CenturyLink represents that it will make all appropriate filings and preparations prior to offering cable service.

#### Technical

CenturyLink's application indicates that its affiliate, Qwest Corporation d/b/a CenturyLink, is certificated by the Minnesota Public Utilities Commission to provide telephone service, and that such company does provide telephone service in the member cities. The application describes CenturyLink's technical plans for providing video over that telephone infrastructure.

The application, Ex. D, represents that CenturyLink or its affiliates are authorized to operate cable systems in several local or statewide markets, and we are aware that since filing of the application CenturyLink has obtained dozens of local franchises in this metropolitan market. The application identifies an experienced management team for CenturyLink's cable operations, and the state-of-the-art IPTV-based delivery platform that will be utilized.

#### Financial

CenturyLink and its affiliates employ 3,000 people in Minnesota. CenturyLink's parent, CenturyLink, Inc., is a large publicly-traded telecommunications company. The application refers to the most recent 10-K. This and other SEC filings are publicly available on-line. The application indicates that the company had operating revenues in excess of \$18B for the fiscal

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<sup>20</sup> See, 621 Order at ¶ 23.

<sup>21</sup> A summary of CenturyLink's filings with the Minnesota Secretary of State can be viewed at: <https://mblsportal.sos.state.mn.us/Business/SearchDetails?filingGuid=6c15b40a-a5d4-e011-a886-001ec94ffe7f>.

year ended 2013. The application further represents that CenturyLink will not require any unique funding sources or borrowing to deploy its cable service. Additionally, the franchise will require CenturyLink to:

- pay a 5% franchise fee and provide 3% PEG support;
- post a \$100,000 performance bond and a \$25,000 letter of credit and be subject to specified sanctions for various potential franchise violations;
- provide insurance of at least \$1,500,000 (the City's statutory limit on liability) per person, and \$2,000,000 aggregate;
- indemnify the City from suits or liabilities arising out of cable operations, the franchise, or a franchise breach, and specifically indemnify the commission and cities against any claim by Comcast.

CenturyLink's affiliate currently has rights to access rights-of-way and has constructed a telephone system and provides telephone and internet access services in the cities. It is difficult to conceive of a scenario in which granting a cable franchise to CenturyLink with the foregoing requirements would increase risks to the commission, cities, or public resources.

### **CONCLUSION**

As required by Chapter 238, CenturyLink provided a complete franchise application. The application information and franchise terms we have negotiated address CenturyLink's qualifications to receive a cable franchise. We see no legal impediment to approving CenturyLink's application and issuing the franchise.

**QUAD CITIES CABLE COMMUNICATIONS COMMISSION**

**RESOLUTION RECOMMENDING APPROVAL  
OF CENTURYLINK CABLE FRANCHISE APPLICATION**

**WHEREAS**, the cities of Andover, Anoka, Champlin, and Ramsey, Minnesota (“Cities”) are members of the Quad Cities Cable Communications Commission (“Commission”), a municipal joint powers entity organized by an agreement pursuant to Minn. Stat. § 471.59, as amended, and;

**WHEREAS**, the Cities enacted substantively identical ordinances granting cable television franchises (collectively, the “Franchise”) authorizing the provision of cable television services within the Cities; and

**WHEREAS**, as a result of several transfers, Comcast of Minnesota, Inc. (“Comcast”) currently holds the Franchise; and

**WHEREAS**, the Commission administers and enforces the Franchise and provides community programming and certain other cable-related services on behalf of the Cities, and;

**WHEREAS**, the Commission has adopted a policy governing the processing and potential issuance of competitive cable franchises by the Cities, and;

**WHEREAS**, the Commission is responsible for processing initial cable franchising requests and making associated recommendations to the Cities; and

**WHEREAS**, the Cities retain final authority to approve and enact any initial franchise(s), and;

**WHEREAS**, at the request of Qwest Broadband Services, Inc. d/b/a CenturyLink (“CenturyLink”), the Commission initiated the process for considering issuance of initial competitive cable franchises under Minnesota law, Minn. Stat., Ch. 238, and;

**WHEREAS**, the Commission received a timely franchise application from CenturyLink dated June 3, 2015, and;

**WHEREAS**, the application was considered by the Commission at a duly-noticed public hearing on June 18, 2015, and;

**WHEREAS**, at the hearing, CenturyLink gave a presentation regarding the application and its proposed “Prism” video services, and the Commission received Comcast’s written comments dated June 17, 2015 concerning the application, and;

**WHEREAS**, federal law (47 U.S.C. § 541(a)(1)) provides that a franchising authority may not grant an exclusive cable franchise and “may not unreasonably refuse to award an additional competitive franchise,” and;

**WHEREAS**, state law (Minn. Stat. § 238.084, subd. 1(d)) also provides that cable franchises must be non-exclusive, and;

**WHEREAS**, state law (Minn. Stat. § 238.08, subd. 1(b)) specifically provides for franchising of a competitive provider within an area already served, and;

**WHEREAS**, state law includes a “level playing field” requirement, providing that grant of “an additional franchise for cable service for an area included in an existing franchise” must not be on “terms and conditions more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or (3) franchise fees,” and;

**WHEREAS**, CenturyLink’s application notes that on March 5, 2007, the Federal Communications Commission (“FCC”) released a Report and Order in its “*Video Franchising*” proceeding (MB Docket No. 05-311)(“Order”) concluding that “level playing field” requirements may result in unreasonable refusals to grant competitive franchises, and;

**WHEREAS**, the Order preempts certain “level playing field” requirements, and;

**WHEREAS**, at the conclusion of the public hearing, the Commission directed staff and legal counsel, Kennedy & Graven, to negotiate franchise terms with CenturyLink and such terms have been negotiated.

**NOW THEREFORE, BE IT RESOLVED** that the Commission recommends that the Cities approve the CenturyLink franchise application based on the following:

1. CenturyLink’s application substantially complies with the Commission’s application instructions and requirements, and provides the information necessary to make a decision.
2. Minnesota’s “level playing field” requirements, Minn. Stat. § 238.08, Subd. 1, are not preempted by the Order.
3. The franchise(s) negotiated with CenturyLink comply with the “level playing field” requirements, and issuance of franchises to CenturyLink will advance the Cities’ interests in obtaining competitive cable and telecommunications services.
4. No basis to find CenturyLink legally, technically, or financially unqualified to receive franchises has been identified. The application and publically-available information reflect that:

Legal: CenturyLink is authorized to do business in the state of Minnesota. The company represents that it has or will make all appropriate filings and preparations prior to offering cable service.



Technical: CenturyLink's affiliate is certificated by the Minnesota Public Utilities Commission to provide telephone service in Minnesota. CenturyLink is one of Minnesota's largest incumbent local exchange carriers and currently provides telephone service in a portion of the City.

CenturyLink or its affiliates are authorized to operate cable systems in multiple markets in the United State. The application identifies an experienced management team for cable operations, and describes a state-of-the-art delivery platform that will be utilized.

Financial: CenturyLink's parent, CenturyLink, Inc., is a large publicly-traded telecommunications company. The application and other SEC filings publicly available on-line indicate that the company had operating revenues in excess of \$18B for the fiscal year ended 2013. The application represents that CenturyLink will not require any unique funding sources or borrowing to deploy its cable service.

The proposed franchises will also require CenturyLink to:

- pay a 5% franchise fee and provide 3% PEG support;
- post a \$100,000 performance bond and a \$25,000 letter of credit and be subject to specified sanctions for various potential franchise violations;
- provide insurance of at least \$1,500,000 (municipal statutory limit on liability) per person, and \$2,000,000 aggregate;
- indemnify the Cities from suits or liabilities arising out of cable operations, the franchise, or a franchise breach, and specifically indemnify the Commission and Cities against any claim by Comcast.

Finally, CenturyLink's affiliate currently has rights to access rights-of-way and has constructed a telephone system and provides telephone and internet access services in the Cities.

**BE IT RESOLVED FURTHER** that the Commission recommends that the Cities adopt the franchise negotiated by the Commission's staff and legal counsel.

Approved and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Executive Director

**ORDINANCE NO. \_\_\_\_**

AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC. D/B/A CENTURYLINK, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF RAMSEY, MINNESOTA FOR THE PURPOSE OF PROVIDING CABLE SERVICE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

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

**STATEMENT OF INTENT AND PURPOSE**

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

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

**FINDINGS**

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

1. The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing, and operating the System were considered and found adequate and feasible;
3. The Franchise granted to Grantee by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

**SECTION 1.  
SHORT TITLE AND DEFINITIONS**

- 1.1. Short Title.** This Franchise Ordinance shall be known and cited as the "CeuturyLink Cable Franchise Ordinance."

- 1.2** **Definitions.** For the purposes of this Franchise, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural; and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein or in the City Code shall be given the meaning set forth in applicable law and, if not defined therein, the words shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
- 1.3** **“Actual Cost”** means the lowest legally-permissible incremental cost to the Grantee of materials, capitalized labor, and borrowing necessary to install and construct fiber-optic lines, coaxial cable and/or equipment.
- 1.4** **“Affiliate”** means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee.
- 1.5** **“Basic Cable Services”** means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
- 1.6** **“Cable Service”** or **“Service”** means (1) the one-way transmission to Subscribers of video programming or other programming services; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services. Cable Service shall also include any video programming service for which a franchise from a local government is required under state law.
- 1.7** **“Cable System”** or **“System”** means the facilities of the Grantee, which, together with the facilities of an affiliate of the Grantee, consist of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service, which includes video programming and which is provided to multiple Subscribers within the City. A reference to the System in this Franchise refers to any part of such System including, without limitation, Set Top Boxes as defined herein. The definition of “Cable System” or “System” shall not be deemed to circumscribe or limit the valid authority of the City to regulate or franchise the activities of any other communications system or provider of communications service to the full extent permitted by law. "Cable System" or "System" as defined herein shall not be inconsistent with the definitions set forth in applicable law. Unless otherwise specified, the term shall refer to the System utilized under this Franchise.
- 1.8** **“City”** means City of Ramsey, Minnesota, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

- 1.9 **“City Code”** means the Ramsey City Code, as amended from time to time.
- 1.10 **“City Council”** means the governing body of the City.
- 1.11 **“Commission”** means the Quad Cities Cable Commission, a municipal joint powers consortium comprised of the municipalities of Andover, Anoka, Champlin and Ramsey, Minnesota. In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City, and the rights and obligations related thereto shall, where possible, accrue pro rata to the City, pursuant to a transition agreement to be negotiated at such time by and between the City, the Commission and the Grantee. The total burden of Grantee's obligations under this Franchise and the Grantee's Franchise with the other member cities of the Commission shall not be increased as a result of any such withdrawal.
- 1.12 **“Demarcation Point”** means the physical point at which the System enters a Subscriber's home or building, or institution building receiving Service under this Franchise.
- 1.13 **“Drop”** means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
- 1.14 **“Educational Access Channel”** or **“Educational Channel”** means any channel on the System set aside by the Grantee, the Commission and/or the City for Noncommercial educational use by educational institutions, as contemplated by applicable law.
- 1.15 **“FCC”** means the Federal Communications Commission, its designee, and any legally appointed, designated or elected agent or successor.
- 1.16 **“Franchise”** or **“Cable Franchise”** means this ordinance, as may be amended from time to time, any exhibits attached hereto and made a part hereof, and the regulatory and contractual relationship established hereby.
- 1.17 **“Governmental Access Channel”** or **“Governmental Channel”** means any channel on the System set aside by the Grantee, the Commission and/or the City for Noncommercial use by the City or its delegatee.
- 1.18 **“Grantee”** is Qwest Broadband Services, Inc. d/b/a CenturyLink, and its lawful successors, transferees or assignees.
- 1.19 **“Gross Revenue”** means any and all revenues arising from or attributable to, or in any way derived directly or indirectly by the Grantee or its Affiliates, subsidiaries, or parent, or by any other entity that owns or operates the System, from the provision of Cable Services (including cash, credits, property or other consideration of any kind or nature). Gross Revenues include, by way of illustration and not limitation, monthly fees charged to

Subscribers for any basic, optional, premium, per-channel, or per-program service, or other Cable Service as defined under applicable law; Installation, disconnection, reconnection, and change-in-service fees; Lockout Device fees; Leased Access Channel fees; late fees and administrative fees; fees, payments or other consideration received from programmers for carriage of programming on the System and accounted for as revenue under GAAP; revenues from rentals or sales of Set Top Boxes or other equipment; fees related to commercial and institutional usage of the System; net advertising revenues; interest; barter; revenues from program guides; franchise fees; and revenues to the System from home shopping, bank-at-home channels and other revenue sharing arrangements. Gross Revenues shall include revenues received by an entity other than the Grantee, an Affiliate or another entity that operates the System where necessary to prevent evasion or avoidance of the Grantee's obligation under this Franchise to pay the franchise fee. Gross Revenues shall not include: (i) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs, provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) any taxes on services furnished by the Grantee imposed by any municipality, state or other governmental unit, provided that franchise fees shall not be regarded as such a tax; (iii) FCC regulatory fees; (iv) Subscriber credits, adjustments or refunds; or (v) refundable Subscriber deposits.

- 1.20** **"Installation"** means the connection of the System from feeder cable to the point of connection with the Subscriber Set Top Box or other terminal equipment.
- 1.21** **"Leased Access Channel"** means channels on the System which are designated or dedicated for use by a Person unaffiliated with the Grantee pursuant to 47 U.S.C. § 532.
- 1.22** **"Living Unit"** means a distinct address as tracked in the QC network inventory database, used by Grantee to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.
- 1.23** **"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 System.
- 1.24** **"Mosaic Channel"** means a channel which displays miniaturized media screens and related information for a particular group of channels with common themes. The Mosaic Channel serves as a navigation tool for Subscribers, and, with respect to PEG Channels, displays the group of access channels on a single channel screen and also provides for easy navigation to a chosen access channel in the group.
- 1.25** **"Remote Terminal"** means a facility that is located in a neighborhood, which houses the electronics used to support the provision of Cable Services.
- 1.26** **"Noncommercial"** means, in the context of PEG channels, that particular products and services are not promoted or sold. This term shall not be interpreted to prohibit a PEG channel operator or programmer from soliciting and receiving financial support to produce

and transmit video programming on a PEG channel, or from acknowledging a contribution.

- 1.27** **"Normal Operating Conditions"** means those service conditions that are within the control of the Grantee. Conditions that are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, maintenance, or upgrade of the System. Conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.
- 1.28** **"PEG"** means public, educational, and governmental.
- 1.29** **"Person"** means any individual, partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability corporation, or other organization of any kind, or any lawful successor or transferee thereof, but such term does not include the City.
- 1.30** **"Public Access Channel(s)"** means any channels on the System set aside by the Grantee, the Commission and/or the City for Noncommercial use by the general public, as contemplated by applicable law.
- 1.31** **"QC"** means Qwest Corporation, a wholly owned subsidiary of CenturyLink, Inc. and an Affiliate of Grantee.
- 1.32** **"Quad Cities Franchise Area"** means the geographic area consisting of the Minnesota cities of Andover, Anoka, Champlin and Ramsey.
- 1.33** **"Qualified Living Unit"** means a Living Unit which meets the minimum technical qualifications defined by Grantee for the provision of Cable Service. A Living Unit capable of receiving a minimum of 25 Mbps downstream will be generally capable of receiving Cable Service subject to Grantee performing certain network grooming and conditioning.
- 1.34** **"Right-of-Way"** or **"Rights-of-Way"** means the surface, air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, court, concourse, bridge, tunnel, park, parkway, skyway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the City owned by or under control of the City, or dedicated for general public use by the City, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a System. No reference herein to a "Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining the System.

- 1.35 **"Right-of-Way Ordinance"** means any ordinance of the City codifying requirements regarding regulation, management and use of Rights-of-Way in the City, including registration, fees, and permitting requirements.
- 1.36 **"Set Top Box"** means an electronic device which converts signals to a frequency acceptable to the television receiver of a Subscriber, and by an appropriate Channel selector, also permits a Subscriber to view all signals included in the package purchased by the Subscriber.
- 1.37 **"Standard Installation"** means any installation to a Qualified Living Unit.
- 1.38 **"State"** means the State of Minnesota, its agencies and departments.
- 1.39 **"Subscriber"** means any Person who lawfully receives service via the System. In the case of multiple office buildings or multiple dwelling units, the term "Subscriber" means the lessee, tenant or occupant.
- 1.40 **"System Upgrade"** means the improvement or enhancement in the technology or service capabilities made by the Grantee to the System as more fully described in this Franchise.

## SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

### 2.1 **Grant of Franchise.**

This Franchise is granted pursuant to the terms and conditions contained herein and in applicable law. The Grantee shall comply with all provisions of this Franchise and applicable laws, regulations and codes. Failure of the Grantee to construct, operate and maintain a System as described in this Franchise, or to meet obligations and comply with all provisions herein, may be deemed a violation of this Franchise.

### 2.2 **Grant of Nonexclusive Authority.**

2.2.1 Subject to the terms of this Franchise, the City hereby grants the Grantee the right to own, construct, operate and maintain a System along the Rights-of-Way. The grant of authority set forth in this Franchise applies only to the Grantee's provision of Cable Service; provided, however, that nothing herein shall limit the Grantee's ability to use the System for other purposes not inconsistent with applicable law or with the provision of Cable Service; and provided further, that any local, State and federal authorizations necessary for the Grantee's use of the System for other purposes are obtained by the Grantee. This Franchise does not confer any rights other than as expressly provided herein, or as provided by federal, State or local law. No privilege or power of eminent domain is bestowed by this Franchise or grant. The System constructed and maintained by Grantee or its agents pursuant to this Franchise shall not interfere with other uses of the Rights-of-Way. The Grantee shall make use of existing poles and other aerial and underground facilities available to the Grantee to the extent it is technically and economically feasible to

do so. However, the City and Grantee acknowledge that QC owns and operates facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to applicable law and the terms and conditions contained in this Franchise. QC's installation and maintenance of facilities in the Rights-of-Way is governed by applicable local, state and federal law. To the extent Grantee constructs and installs facilities in the Rights-of-Way, such facilities and operation of such facilities will be subject to the terms and conditions contained in this Franchise. The City and Company agree that to the extent QC violates any applicable federal, state, or local laws, rules, and regulations, the City shall seek compliance directly from QC. In the event, the City cannot resolve these violations or disputes with QC, the City may look to Grantee to ensure such compliance. Failure by Grantee to ensure QC's or any other Affiliate's compliance with applicable local, state and federal laws, rules, and regulations shall be deemed a material breach of this Franchise by Grantee.

- 2.2.2 Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by the Grantee if the City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.
- 2.2.3 This Franchise and the right it grants to use and occupy the Rights-of-Way shall not be exclusive and this Franchise does not, explicitly or implicitly, preclude the issuance of other franchises or similar authorizations to operate Cable Systems within the City. Provided, however, that the City shall not authorize or permit another Person to construct, operate or maintain a Cable System on material terms and conditions which are, taken as a whole, more favorable or less burdensome than those applied to the Grantee.
- 2.2.4 This Franchise authorizes only the use of Rights-of-Way. Therefore, the grant of this Franchise and the payment of franchise fees hereunder shall not exempt the Grantee from the obligation to pay compensation or fees for the use of City property, both real and personal, other than the Rights-of-Way; provided, however, that such compensation or fees are required by City ordinance, regulation or policy and are nondiscriminatory.
- 2.2.5 Should any other multichannel video programming distributor ("MVPD") over which the City has regulatory jurisdiction provide Cable Service in the current Cable Service area, the City shall not grant more favorable terms, taken as a whole, to such MVPD than are granted to the Grantee. In the event that another Person operates a Cable System authorized by the City on terms and conditions that are, taken as a whole, more favorable or less burdensome than the terms and conditions applicable to the Grantee under this Franchise, the City shall adjust any such terms and conditions in any other Person's authorization or this Franchise so that the terms and conditions under which such Person operates, taken as a whole, are not more favorable or less burdensome than those that are applied to the Grantee.

### **2.3 Lease or Assignment Prohibited.**



No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise, including, without limitation, a requirement on such Person to pay franchise fees on such Person's use of the System to provide Cable Services, to the extent there would be such a requirement under this Franchise if the Grantee itself were to use the System to provide such Cable Service. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of this Franchise.

## **2.4 Franchise Term.**

The Franchise term shall commence on the Effective Date specified in this Franchise. The term of this Franchise shall be ten (10) years from the Effective Date specified in this Franchise.

## **25 Compliance with Applicable Laws, Resolutions and Ordinances.**

**2.5.1** The terms of this Franchise shall define the contractual rights and obligations of the Grantee with respect to the provision of Cable Service and operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to the lawful exercise of the police powers of the City, the City's the right to adopt and enforce additional generally applicable ordinances and regulations, and lawful and applicable zoning, building, permitting and safety ordinances and regulations. The grant of this Franchise does not relieve the Grantee of its obligations to obtain any generally applicable licenses, permits or other authority as may be required by the City Code, as it may be amended, for the privilege of operating a business within the City or for performing work on City property or within the Rights-of-Way, to the extent not inconsistent with this Franchise. Except as provided below, any modification or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of the City's police powers, as enumerated above, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of the Grantee as provided in this Franchise. In no event shall the City adopt or amend any City ordinance or regulation so as to modify the build out requirements set forth in Sections 4.3.1(ii) and 4.3.1(iii) herein without the Grantee's consent.

**2.5.2** The Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within the City which may have the effect of superseding, modifying or amending the terms of Section 3 and/or Section 8.5.3 herein; except that the Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way that exceed burdens on similarly situated Right-of-

Way users. In no event shall the City adopt or amend any City ordinance or regulation so as to modify the build out requirements set forth in Sections 4.3.1(ii) and 4.3.1(iii) herein without the Grantee's consent.

**2.5.3** In the event of any conflict between Section 3 and/or Section 8.5.3 of this Franchise and any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 3 and/or Section 8.5.3 of this Franchise shall be superseded by such City ordinance or regulation; except that the Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Public Rights-of-Way that exceed burdens on similarly situated Right-of-Way users. Section 4 of this Franchise shall not be superseded by any allegedly conflicting provision of a City ordinance or regulation.

**2.5.4** In the event any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 3 and/or Section 8.5.3 of this Franchise, the Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted; except that the Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way that exceed burdens on similarly situated Rights-of-Way users. Section 4 of this Franchise shall not be superseded by any allegedly conflicting provision of a City ordinance or regulation.

**2.5.5** In the event the Grantee cannot determine how to comply with any Right-of-Way requirement of the City, whether pursuant to this Franchise or other requirement, the Grantee shall immediately provide written notice of such question, including the Grantee's proposed interpretation, to the City. The City shall provide a written response within ten (10) business days of receipt indicating how the requirements cited by the Grantee apply. The Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within thirteen (13) business days of mailing or delivering such written question.

## **2.6 Rules of Grantee.**

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and applicable law, 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 of this Franchise or applicable law.

## **2.7 Territorial Area Involved.**

This Franchise is granted for the corporate boundaries of the City, as they exist from time to time.

**2.8 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 the Grantee or the City's designated Franchise administrator, 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 of Ramsey, Minnesota  
                                  Attn: City Administrator  
                                  City Administrator  
                                  7550 Sunwood Drive NW  
                                  Ramsey, MN 55303

With copies to:           Executive Director  
                                  Quad Cities Cable Communications Commission  
                                  12254 Ensign Avenue North  
                                  Champlin, MN 55316

And to:                     Kennedy & Graven, Chartered  
                                  Attn: Robert J. V. Vose  
                                  470 U.S. Bank Plaza  
                                  200 South Sixth Street  
                                  Minneapolis, MN 55402

If to Grantee:             Qwest Broadband Services, Inc d/b/a CenturyLink  
                                  Attn: Public Policy  
                                  1801 California Street, 10<sup>th</sup> Floor  
                                  Denver, Colorado 80202

With copies to:           Qwest Broadband Services, Inc d/b/a CenturyLink  
                                  Attn: Public Policy  
                                  200 South Fifth Street, 21<sup>st</sup> Floor  
                                  Minneapolis, MN 55402

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

**2.10 Effective Date.**

This Franchise shall become effective after: (i) all conditions precedent to its effectiveness as an ordinance of the City have occurred; (ii) all conditions precedent to its execution are satisfied; (iii) it has been approved by the City Council in accordance with applicable law; and (iv) it has been accepted and executed by the Grantee and the City (the "Effective Date").

### **SECTION 3. CONSTRUCTION STANDARDS**

#### **3.1 Registration, Permits and Construction Codes.**

**3.1.1** The Grantee shall strictly adhere to all applicable State and local laws, regulations and policies adopted by the City Council applicable to the location, construction, installation, operation or maintenance of the System in the City. The City has the right to supervise all construction or installation work performed in the Rights-of-Way as it shall find necessary to ensure compliance with the terms of this Franchise and other applicable provisions of law and regulations.

**3.1.2** Failure to obtain permits or to comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other applicable law, code or regulation.

#### **3.2 Restoration of Rights-of-Way and Property.**

Any Rights-of-Way, or any sewer, gas or water main or pipe, drainage facility, electric, fire alarm, police communication or traffic control facility of the City, or any other public or private property, which is disturbed, damaged or destroyed by Grantee during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored, replaced, reconstructed or repaired by the Grantee, at its expense, to the same condition as that prevailing prior to the Grantee's work, to the extent consistent with applicable statutes and rules. It is agreed that in the normal course, with respect to fire and police department facilities and equipment, and water and sewer facilities, and other essential utilities and services, as determined by the City, such restoration, reconstruction, replacement or repairs shall be commenced immediately after the damage, disturbance or destruction is incurred, and the Grantee shall take diligent steps to complete the same, unless an extension of time is obtained from the appropriate City agency or department. In all other cases, reconstruction, replacement, restoration or repairs shall be commenced within no more than three (3) days after the damage, disturbance or destruction is incurred, and shall be completed as soon as reasonably possible thereafter. If the Grantee shall fail to perform the repairs, replacement, reconstruction or restoration required herein, the City shall have the right to put the Rights-of-Way, public, or private property back into good condition. In the event City determines that the Grantee is responsible for such disturbance or damage, the Grantee shall be obligated to fully reimburse the City for required repairs, reconstruction and restoration.

#### **3.3. Conditions on Right of Way Use.**

- 3.3.1** Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
- 3.3.2** All System transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as not to obstruct or interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of-Way and not to interfere with existing public utility installations.
- 3.3.3** The Grantee shall, at its sole expense, by a reasonable time specified by the City, protect, support, temporarily disconnect, relocate or remove any of its property when required by the City by reason of traffic conditions; public safety; Rights-of-Way construction; street maintenance or repair (including resurfacing or widening); change in Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of government-owned communications or traffic control system, public work or improvement of government-owned utility; Right-of-Way vacation; or for any other purpose where the convenience of the City would be served thereby. If the Grantee fails, neglects, or refuses to comply with the City's request, the City may protect, support, temporarily disconnect relocate or remove the appropriate portions of the System at the Grantee's expense for any of the City's incremental costs incurred as a result of the Grantee's failure to comply. Except for the City's gross negligence, the City shall not be liable to the Grantee for damages resulting from the City's protection, support, disconnection, relocation or removal, as contemplated in the preceding sentence.
- 3.3.4** The Grantee shall not place poles, conduits, or other fixtures of the System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all lawful requirements of the City.
- 3.3.5** The Grantee shall, upon request of any Person holding a moving permit issued by the 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 (except in the case where the requesting Person is the City for the purpose of moving a City-owned building, in which case

no payment shall be required). The Grantee shall be given not less than ten (10) days' advance written notice to arrange for such temporary wire changes.

- 3.3.6** To the extent consistent with generally applicable City Code provisions, rules and regulations, the Grantee shall have the right to remove, cut, trim and keep clear of its System trees or other vegetation in and along or overhanging the Rights-of-Way. However, in the exercise of this right, the Grantee agrees not to cut or otherwise injure said trees to any greater extent than is reasonably necessary. This Franchise does not give the Grantee any authority to remove trees on private property in the City. All trimming shall be performed at no cost to the City.
- 3.3.7** The Grantee shall use its best efforts to give prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- 3.3.8** If any removal, relaying or relocation is required to accommodate the construction, operation or repair of the facilities of a Person that is authorized to use the Rights-of-Way, the Grantee shall, after thirty (30) days' advance written notice, and payment of all costs by such Person, commence action to effect the necessary changes requested by the responsible entity. If multiple responsible parties are involved, the City may resolve disputes as to the responsibility for costs associated with the removal, relaying or relocation of facilities among entities authorized to install facilities in the Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or any State or federal law or regulation.
- 3.3.9** In the event the System creates or is contributing to an imminent danger to health, safety or property, as reasonably determined by the City, the City, after providing notice to the Grantee, if it is reasonably feasible to do so, may remove or relocate any or all parts of the System at no expense to the City, other than the City's costs to act on such determination.

#### **3.4 Use of Existing Poles and Undergrounding of Cable.**

- 3.4.1** Where existing poles, underground conduits, ducts or wire holding structures are available for use by the Grantee, but it does not make arrangements for such use, the City may require, through the established permit, or any other applicable procedure, the Grantee to use such existing poles and wireholding structures if the City determines that the public convenience would be enhanced thereby and the terms available to the Grantee for the use of such poles and structures are just and reasonable.
- 3.4.2** The Grantee agrees to place its cables, wires or other like facilities underground, in the manner as may be required by the provisions of the City Code and City policies, procedures, rules and regulations, as amended from time to time, where all utility facilities are placed underground. The Grantee shall not place facilities, equipment or fixtures where they will interfere with any existing gas, electric,

telephone, water, sewer or other utility facilities or with any existing installations of the City, or obstruct or hinder in any manner the various existing utilities serving the residents of the City. To the extent consistent with the City Code, City policies, procedures, rules and regulations, System cable and facilities may be constructed overhead where poles exist and electric or telephone lines or both are now overhead. However, in no case may the Grantee install poles in areas of the City where underground facilities are generally used by the utilities already operating. If the City, at a future date, requires all electric and telephone lines to be placed underground in all or part of the City, the Grantee shall, within a reasonable time, similarly move its cables and lines, at no expense to the City, and shall not seek damages from the City for such compliance.

### **3.5 Installation of Facilities.**

**3.5.1** No poles, towers, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without obtaining any required permit or other authorization from the City.

**3.5.2** No placement of any pole or wire holding structure of the Grantee is to be considered a vested fee interest in the Rights-of-Way or in City property. Whenever feasible, all transmission and distribution structures, lines, wires, cables, equipment and poles or other fixtures erected by the Grantee within the City are to be so located and installed as to cause minimum interference with the rights and convenience of property owners.

### **3.6 Safety Requirements.**

**3.6.1** All applicable safety practices required by law shall be used during Grantee's construction, maintenance and repair of the System. The Grantee agrees, at all times, to employ ordinary and reasonable care and to install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage or injuries to the public or to property. All structures and all lines, equipment and connections in the Rights-of-Way shall at all times be kept and maintained in a safe condition, consistent with applicable safety codes.

**3.6.2** The Grantee's construction, operation or maintenance of the System shall be conducted in such a manner as not to interfere with City communications technologies related to the health, safety and welfare of City residents.

**3.6.3** The Grantee shall install and maintain such devices as will apprise or warn Persons using the Rights-of-Way of the existence of work being performed on the System in Rights-of-Way.

**3.6.4** The Grantee, or its Affiliate, shall be a member of the One Call Notification System (otherwise known as "Gopher State One Call") or its successor, and shall field mark the locations of its underground facilities upon request. Throughout the term of this Franchise, the Grantee shall identify the location of its facilities for the City at no charge to the City.

### **3.7 Removal of Facilities at Expiration of Franchise.**

At the expiration of the term for which this Franchise is granted, or upon the expiration of any renewal or extension period which may be granted, the City shall have the right to require the Grantee, at the Grantee's sole expense: (i) to remove all portions of the System System used exclusively for the provision of Cable Service from all Rights-of-Way within the City; and (ii) to restore affected sites to their original condition. Should the Grantee fail, refuse or neglect to comply with the City's directive, any portions of the System used exclusively for the provision of Cable Service may at the option of the City become the sole property of the City, at no expense to the City, or be removed, altered or relocated by the City at the cost of the Grantee. The City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation.

## **SECTION 4.**

### **DESIGN PROVISIONS**

#### **4.1 System Facilities and Equipment.**

**4.1.1** The System generally shall have at least the following characteristics:

**4.1.1.1** a modern design when built, utilizing an architecture that will permit additional improvements necessary for high-quality and reliable service throughout the Franchise term, and the capability to operate continuously on a twenty-four hour a day basis without severe material degradation during operating conditions typical to the Minneapolis/St. Paul metropolitan area;

**4.1.1.2** Grantee shall maintain standby power generators capable of powering all headend equipment for at least twenty-four (24) hours. The back-up power supplies serving the System shall be capable of providing power to the System for not less than three (3) hours per occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage. The Grantee shall maintain sufficient portable generators to be deployed in the event that the duration of a power disruption is expected to exceed three (3) hours;

**4.1.1.3** facilities of good and durable quality, generally used in high-quality, reliable systems of similar design;

**4.1.1.4** a System that conforms to or exceeds all applicable FCC technical performance standards, as amended from time to time, which standards are incorporated herein by reference, and any other applicable technical performance standards. End of the line performance must meet or exceed FCC specifications at the end of the Subscriber Drop;



- 4.1.1.5** a System shall, at all times, comply with applicable federal, State and local rules, regulations, practices and guidelines pertaining to the construction, upgrade, operation, extension and maintenance of Cable Systems, including, by way of example (but not limitation):
- (A) National Electrical Code, as amended from time to time; and
  - (B) National Electrical Safety Code (NESC), as amended from time to time.
- 4.1.1.6** facilities and equipment sufficient to cure violations of applicable FCC technical standards and to ensure that Grantee's System remains in compliance with the standards specified in subsection 4.1.1.5;
- 4.1.1.7** such facilities and equipment as necessary to maintain, operate and evaluate the Grantee's System for compliance with applicable FCC technical and customer service standards, as such standards may hereafter be amended;
- 4.1.1.8** status monitoring equipment to alert the Grantee when and where back-up power supplies are being used;
- 4.1.1.9** all facilities and equipment required to properly test the System and conduct an ongoing and active program of preventative maintenance and quality control, and to be able to quickly respond to customer complaints and resolve System problems;
- 4.1.1.10** antenna supporting structures designed in accordance with any applicable governmental building codes, as amended, and painted, lighted and erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission and all other applicable codes and regulations;
- 4.1.1.11** facilities and equipment at the headend allowing the Grantee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration;
- 4.1.1.12** the Grantee shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Grantee's Cable Service. The Grantee, however, shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls;
- 4.1.1.13** facilities and equipment capable of operating within the temperature ranges typical to the climate over the calendar year;

**4.1.1.14** the System shall be so constructed and operated that there is no perceptible deterioration in the quality of Public, Educational or Governmental Access Channel signals after delivery of such signals to the first interface point with Grantee's headend or the subscriber network, whichever is applicable, as compared with the quality of any other channel on the System. As used in this paragraph, "deterioration" refers to delivery that is within the control of the Grantee; and

**4.1.2** The Grantee is authorized to operate the System within the territorial limits of the City as of the Effective Date of this Franchise.

**4.1.3** The System shall provide sufficient capacity for interactive services at all times and have capacity materially equivalent to at least 870 MHz for all active and passive components.

**4.1.4** The System shall initially have a minimum channel capacity to provide at least 78 channels downstream to all Subscribers, plus additional capacity for other services.

**4.1.5** The System shall be designed and constructed in order to allow distribution of PEG Channels as provided in this Franchise.

**4.1.6** All power supplies for the System shall be equipped with standby power capability in accordance with this Section 4.1, and shall use status monitoring equipment at all power supply locations.

**4.1.7** Emergency Alert System. The Grantee shall install and thereafter maintain an Emergency Alert System ("EAS") fully compliant with local, state and federal EAS requirements. This EAS shall at all times be operated in compliance with FCC regulations. The System shall be capable of allowing authorized officials to override the audio and video on all channels on the System that may be lawfully overridden.

**4.1.8** The Grantee shall not assert or otherwise raise any claim before a court of competent jurisdiction or any administrative agency alleging that, as of the Effective Date of this Franchise, the minimum System design and performance requirements set forth in this Franchise are unenforceable under or inconsistent with then current applicable laws or regulations, or any orders or decisions of the FCC.

**4.2** **[Intentionally deleted.]**

**4.3** **System Construction Timetable.**

**4.3.1 Reasonable Build-Out of the Entire City.** The Parties recognize that Grantee, or its affiliate QC, has constructed a legacy communications system throughout

the City that is capable of providing voice grade service. The Parties further recognize that Grantee or its affiliate QC must upgrade its existing legacy communications system and construct new facilities to make it capable of providing Cable Service. The Parties agree that the following is a reasonable build-out schedule taking into consideration Grantee's desire for a standard based on market success and the requirements of Minnesota state law.

- (i) Complete Equitable Build-Out. Grantee aspires to provide Cable Service to all households in the City within five (5) years of the Effective Date. In addition, Grantee commits that a significant portion of its investment will be targeted to areas below the median income in the City.
- (ii) Initial Minimum Build-Out Commitment. Grantee agrees to be capable of serving a minimum of fifteen percent (15%) of the City's households with Cable Service during the first two (2) years of the initial Franchise term, provided, however that Grantee will make its best efforts to complete such deployment within a shorter period of time; Grantee shall make available and offer Cable Service to all Qualified Living Units identified in the reports and maps, as required below showing the number of Qualified Living Units in the City as of the Effective Date. The parties acknowledge and agree that Qualified Living Units identified as of the Effective Date may materially exceed fifteen percent (15%) of City's households. This initial minimum build-out commitment shall include deployment equitably throughout the City and to a significant number of households below the medium income in the City. Nothing in this Franchise shall restrict Grantee from serving additional households in the City with Cable Service.
- (iii) Additional Build-Out Based on Market Success. If, at any quarterly meeting, as required below, Grantee is actually serving twenty seven and one-half percent (27.5%) of the Qualified Living Units, then Grantee agrees the minimum build-out commitment shall increase to include an additional fifteen (15%) of the total households in the City, which Grantee agrees to serve within two (2) years from the quarterly meeting; provided, however, the Grantee shall make its best efforts to complete such deployment within a shorter period of time. For example, if, at a quarterly meeting with the Commission's Executive Director, Grantee shows that sixty percent (60%) of the households in the City are Qualified Living Units and Grantee is actually serving thirty percent (30%) of those households with Cable Service, then Grantee shall serve an additional fifteen percent (15%) of the total households in the City no later than 2 years after that quarterly meeting (a total of seventy-five (75%) of the total households). This additional build-out based on market success shall continue until every household in the City is served.

- (iv) Quarterly Meetings. Commencing the first calendar quarter after the Effective Date, and continuing throughout the term of this Franchise, Grantee shall, unless otherwise directed by the Commission, meet quarterly with the Executive Director of the Commission. At each quarterly meeting, Grantee shall present information acceptable to the City/Commission showing the number of Qualified Living Units Grantee presently capable of receiving Cable Service and the number of Qualified Living Units that Grantee is actually serving with Cable Service. Grantee shall also present information acceptable to the City/Commission that Grantee is equitably serving all portions of the City in compliance with this subsection 4.3.1. In order to permit the City/Commission to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall promptly, upon reasonable demand, show to the City/Commission (to the City/Commission's reasonable satisfaction) maps and provide other documentation showing exactly where within the City the Grantee is currently providing Cable Service.
- (v) Specifically, the Grantee shall present reports and maps showing the Commission the following information:
  - a. The total number of Living Units throughout the City;
  - b. The total number of Qualified Living Units throughout the City both as of the Effective Date and the then-current calendar quarter;
  - c. The total number of Qualified Living Units, in the City, subscribing to the Cable Service provided by the Grantee;
  - d. Locations of all Qualified Living Units throughout the City.

**4.3.2** All construction shall be performed in accordance with applicable laws and regulations, except where specifically waived by the City.

**4.3.3** The Grantee shall make best efforts to provide the City with notice prior to its commencement of steps of the System construction in which possible service disruptions or physical construction activities may occur.

**4.3.4** No System Node shall be activated until it is tested, and the Grantee determines that all applicable technical standards have been met or exceeded.

#### **4.4 Periodic Progress Report.**

**4.4.1** Public Notification. The Grantee shall establish and maintain some reasonable means by which to inform the public and its Subscribers about: Cable Service availability.

#### **4.5 Line Extension Requirements.**

**4.5.1** Subject to subsection 4.3 above, the Grantee shall make Cable Service available to all Qualified Living Units within the City, including multiple dwelling unit buildings except for multiple dwelling unit buildings to which the Grantee, after best efforts, has not obtained authorization to access.

Grantee shall have a line extension obligation a reasonable time after the first date by which Grantee is providing Cable Service to more than fifty percent (50%) of all subscribers receiving facilities based Cable Service from both the Grantee and any other provider(s) of Cable Service within the City based on such Subscriber count information as City may possess, including information available to the City on a trade-secret or non-public basis. At that time, the City, in its reasonable discretion and after meeting with Grantee, shall discuss the timeframe to complete deployment to the remaining households in the City subject to a Line Extension requirement that is the same or similar to the requirement of the incumbent franchised cable operator.

**4.5.2** Within the City's boundaries, including any areas annexed after the Effective Date of this Franchise, the Grantee must provide Service to a Qualified Living Unit upon request.

#### **4.6 System Maintenance.**

**4.6.1** The Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. The Grantee shall use its best efforts to provide the City with at least twenty-four (24) hours' prior notice of a planned service interruption, except for a planned service interruption which will have a minimal impact on Subscribers, usually meaning affecting less than one hundred (100) Subscribers or less than a fifteen (15) minute interruption.

**4.6.2** Maintenance of the System shall be performed in accordance with the applicable technical performance and operating standards established by FCC rules and regulations. Should the FCC choose to abandon this field and does not preempt the City's entry into this field, the City may adopt such technical performance and operating standards as its own, and the Grantee shall comply with them at all times.

#### **4.7 System Tests and Inspections; Special Testing.**

**4.7.1** Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and other performance standards established by law or regulation.

**4.7.2** The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise. In addition, the City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding System construction, operations or installation work pertaining to such location(s). Such

tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers of such testing.

- 4.7.3 Before ordering such tests, the Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The City shall meet with the 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, the City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or resolution of complaints, the tests shall be conducted at the Grantee's expense by a qualified engineer selected by the City and the Grantee, and Grantee shall cooperate in such testing.
- 4.7.4 Unless otherwise provided in this Franchise, tests shall be supervised by the Grantee's chief technical authority, or designee, who shall certify all records of tests provided to the City.
- 4.7.5 The Grantee shall provide the City with at least two (2) business days' prior written notice of, and opportunity to observe, any tests performed on the System.
- 4.7.6 Test results shall be filed with the City within fourteen (14) days of a written request by the City.
- 4.7.7 If any test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the City, shall take corrective action, retest the locations and advise the City of the action taken and the results achieved by filing a written report certified by the Grantee's chief technical authority.

#### **4.8 Drop Replacement.**

The Grantee shall replace, at no separate charge to an individual Subscriber, all Drops and/or associated passive equipment in accordance with applicable law including FCC regulations.

#### **4.9 FCC Reports.**

Unless otherwise required by the terms of this Franchise, the results of any tests required to be filed by Grantee with the FCC or in the Grantee's public file as it relates to this Franchise shall upon request of the City also be filed with the City within ten (10) days of the request.

#### **4.10 Nonvoice Return Capability.**

Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.

#### **4.11 Lockout Device.**

Upon the request of a Subscriber, the Grantee shall make a Lockout Device available at no additional charge, other than a charge for a Set Top Box.

#### **4.12 Types of Service.**

Should the Grantee desire to change the selection of programs or services offered on any of its tiers, it shall maintain the mix, quality and level of services provided over the System. Any change in programs or services offered shall comply with all lawful conditions and procedures contained in this Franchise and in applicable law or regulations.

#### **4.13 Uses of System.**

The Grantee shall, upon request of the Commission, advise the Commission of all active uses of the System, for both entertainment and other purposes, and the Commission shall have the right to conduct unannounced audits of such usage.

### **SECTION 5.**

#### **SERVICE PROVISIONS**

#### **5.1 Customer Service Standards.**

The Grantee shall at all times comply with applicable FCC customer service standards. In addition, the Grantee shall at all times satisfy all additional or stricter customer service requirements included in this Franchise and any customer service requirements set forth in any ordinance or regulation lawfully enacted by the City.

#### **5.2 Video Programming.**

Except as otherwise provided in this Franchise or in applicable law, all programming decisions remain the discretion of the Grantee, provided that the Grantee notifies the Commission and Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments unless otherwise permitted under applicable federal, State and local laws and regulations. Grantee shall cooperate with the Commission and use best efforts to provide all Subscriber notices to the Commission prior to delivery to Subscribers. Location and relocation of the PEG channels shall be governed by Sections 6.1.3-6.1.4.

#### **5.3 Regulation of Service Rates.**

**5.3.1** The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or State law(s). The City reserves the right to regulate rates for any future services to the extent permitted by law.

**5.3.2** The Grantee shall provide at least one billing cycle prior written notice (or such longer period as may be specified in FCC regulations) to Subscribers and to the City of any changes in rates, regardless of whether or not the Grantee

believes the affected rates are subject to regulation, except to the extent such notice requirement is specifically waived by governing law. Bills must be clear, concise, and understandable, with itemization of all charges.

#### **5.4 Sales Procedures.**

The Grantee shall not exercise deceptive sales procedures when marketing Services within the City. In its initial communication or contact with a Subscriber or a non-Subscriber, and in all general solicitation materials marketing the Grantee or its Services as a whole, the Grantee shall inform the non-Subscriber of all levels of Service available, including the lowest priced and free service tiers. The Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulations. Grantee may satisfy the provisions of this paragraph by providing a toll free telephone number where a Person may inquire and be informed about all levels of Service (including the lowest cost level) offered by the Grantee and the associated charges.

#### **5.5 Subscriber Inquiry and Complaint Procedures.**

**5.5.1** The Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive general public and Subscriber complaints, questions and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week, 365 days a year basis. Trained representatives of the Grantee shall be available to respond by telephone to Subscriber and service inquiries.

**5.5.2** The Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the FCC and the City where applicable and lawful. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.

**5.5.3** Subject to the Grantee's obligations pursuant to law regarding privacy of certain information, the Grantee shall prepare and maintain written records of all complaints received from the City and the Commission and the resolution of such escalated complaints, including the date of such resolution. Such written records shall be on file at the office of the Grantee. The Grantee shall provide the City or Commission with a written summary of such complaints and their resolution upon request of the City or Commission. As to Subscriber complaints, Grantee shall comply with FCC record-keeping regulations, and make the results of such record-keeping available to the City or Commission upon request.



- 5.5.4** Excluding conditions beyond the control of the Grantee, the Grantee shall commence working on a service interruption within twenty-four (24) hours after the service interruption becomes known and pursue to conclusion all steps reasonably necessary to correct the interruption. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem, and pursue to conclusion all steps reasonably necessary to correct the problem.
- 5.5.5** The Grantee may schedule appointments for Installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during the hours of 9:00 a.m. to 8:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturdays. The Grantee may also schedule service calls outside such hours for the convenience of customers. The Grantee shall use its best efforts to not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the installer or technician is late and will not meet the specified appointment time, he/she must use his/her best efforts to contact the customer and reschedule the appointment at the sole convenience of the customer. Service call appointments must be met in a manner consistent with FCC standards.
- 5.5.6** The Grantee shall respond to written complaints from the City and the Commission in a timely manner, and provide a copy of each response to the City and the Commission within thirty (30) days. In addition, the Grantee shall respond to all written complaints from Subscribers within (30) days of receipt of the complaint.
- 5.5.7.** The Grantee shall have TDD/TYY (or equivalent) equipment, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the Grantee.

**5.6**     **Subscriber Contracts.**

The Grantee shall file with the Commission any standard form Subscriber contract utilized by Grantee. If no such written contract exists, the Grantee shall file with the Commission a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday.

**5.7**     **Service Credit.**

**5.7.1** In the event a Subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing cycle.

**5.7.2** If, for any reason, Service is interrupted for a total period of more than twenty-four (24) hours in any thirty (30) day period, Subscribers shall, upon request, be credited pro rata for such interruption.

**5.8 Refunds or Credits.**

**5.8.1** Any refund checks shall be issued promptly, but not later than either:

**5.8.1.1** the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

**5.8.1.2** the return of the equipment supplied by the Grantee if Service is terminated.

**5.8.2** Any credits for Service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

**5.9 Late Fees.**

Fees for the late payment of bills shall not be assessed until after the Service has been fully provided.

**5.10 Notice to Subscribers.**

**5.10.1** The Grantee shall provide each Subscriber at the time Cable Service is installed, and at least every twelve (12) months thereafter, the following materials:

**5.10.1.1** instructions on how to use the Cable Service;

**5.10.1.2.** billing and complaint procedures, and written instructions for placing a service call, filing a complaint, or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);

**5.10.1.3** a schedule of rates and charges, channel positions and a description of products and services offered, including any free or universal service;

**5.10.1.4** prices and options for programming services and conditions of subscription to programming and other services; and

**5.10.1.5** a description of the Grantee's installation and service maintenance policies, Subscriber privacy rights, and privacy rights (only at installation of such service), delinquent Subscriber disconnect and reconnect procedures and any other of its policies applicable to Subscribers.

**5.10.2** Copies of materials specified in the preceding subsection shall be provided to the Commission upon request.

**5.10.3** All Grantee promotional materials, announcements and advertising of Cable Service to Subscribers and the general public, where price information is listed in any manner, shall be reasonably clear, concise, accurate and understandable.

**5.11 Exclusive Contracts and Anticompetitive Acts Prohibited.**

**5.11.1** The Grantee may not require a residential Subscriber to enter into an exclusive contract as a condition of providing or continuing Cable Service.

**5.11.2** The Grantee shall not engage in acts prohibited by federal or State law that have the purpose or effect of limiting competition for the provision of Cable Service in the City.

**5.12 Office Availability and Payment Centers.**

**5.12.1** The Grantee shall install, maintain and operate, throughout the term of this Franchise, a single staffed payment center in the Quad Cities Franchise Area with regular business hours at a location agreed upon by the Commission and the Grantee. Additional payment centers may be installed at other locations. The purpose of the payment center(s) shall be to receive Subscriber payments. All Subscriber remittances at a payment center shall be posted to Subscribers' accounts within forty-eight (48) hours of remittance. Subscribers shall not be charged a late fee or otherwise penalized for any failure by the Grantee to properly credit a Subscriber for a payment timely made.

**5.12.2** The Grantee shall, at the request of the Subscriber, deliver or retrieve equipment at no delivery charge in association with a request for service repair, or retrieval charge in association with the discontinuation of Service, (e.g., Set Top Boxes and remote controls). Grantee will not charge a Subscriber for the replacement of a defective Set Top Box or for the return of a Set Top Box when the Subscriber discontinues service.

**SECTION 6.**

**ACCESS CHANNEL(S) PROVISIONS**

**6.1. Public, Educational and Government Access.**

**6.1.1** The City or its designee shall operate, administer, promote, and manage PEG access programming on the Cable System.

**6.1.2** Within one hundred eighty (180) days from the Effective Date, the Grantee shall dedicate and make available seven (7) video channels for public, educational, governmental and religious use; provided, however, that the Grantee shall not be required to provide more, nor shall provide fewer, such channels than the incumbent franchise. Use of the seven (7) PEG Access Channels shall be

determined by the Commission. The Commission shall have the right to rename, reprogram or otherwise change the use of these channels at any time, in its sole discretion, provided such use is Noncommercial and public, educational, governmental or religious in nature. Nothing herein shall diminish any rights of the Commission to secure additional PEG channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference.

**6.1.3** Upon designating the location (i.e. channel number) of the PEG channels, the channels shall not be relocated without the consent of the Commission. Grantee shall make reasonable efforts to minimize relocations of the PEG channels. Grantee must request any channel relocation at least three (3) months prior to seeking to implement the channel relocation. Grantee shall reimburse the City, the Commission and/or PEG entity for any reasonable costs incurred for: (i) purchasing or modifying equipment, business cards, and signage; (ii) any marketing and notice of the channel change that the Commission, the City and/or PEG entity reasonably determines is necessary; (iii) logo changes; and (iv) promoting, marketing and advertising the channel location of the affected PEG channel(s) during the twelve-month period preceding the effective date of the channel change. Alternatively, the Grantee may choose to supply necessary equipment itself, provided such equipment is satisfactory to the City, the Commission or PEG entity.

**6.1.4** Grantee shall make all PEG channels available in standard definition (SD), digital format, and in high definition (HD) provided that the signal received from the Commission, City or PEG entity by the Grantee is in HD, and provided that the Grantee shall not be required to provide the PEG channels at a resolution higher than the highest resolution used in connection with the Grantee's delivery of other channels. Grantee may implement HD carriage of the PEG channels in any manner (including selection of compression, utilization of IP, amount of system capacity or bandwidth, and other processing characteristics) that produces a signal as accessible, functional, useable and of a quality comparable (meaning indistinguishable to the viewer) to broadcast HD channels carried on the cable system. The Commission acknowledges that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any subscriber who can view an HD signal delivered via the cable system at a receiver shall also be able to view the HD PEG channel at that receiver, without additional charges or equipment.

All of the Access Channels will be made available through a multi-channel display (i.e. a picture in picture feed) on a single TV screen called a "mosaic" (the "Quad Cities Mosaic"), where a cable subscriber can access via an interactive video menu one of any of the seven (7) Access Channels. The Quad Cities Mosaic will be located on Channel 40. The seven (7) Access Channels will be located at Channels 8440-8445 and 8049 (SD), and 8940-8945 and 8549 (HD). The Quad Cities Mosaic will contain only Access Channels authorized by the Commission, provided that the Commission may add to its Mosaic channels originated by other franchising authorities with consent of such originator if programming on such channel(s) is of public interest within the Quad Cities Franchise Area. Grantee shall not include any other programming or Channels on

the Quad Cities Mosaic, or any Quad Cities originated programming on another PEG producer's Mosaic, without the Commission's written consent.

- 6.1.5** As the Grantee innovates and improves the functionality and interactivity and/or adds capability for personalization of the Mosaics, the Grantee will provide the same navigational, interactive and personalization features for the Quad Cities Mosaic Channel as are available to Subscribers for every other commercial Mosaic Channel. (For example, if a Subscriber has the capability to add selected sports or news Channels to the Sports or News Mosaics, then that Subscriber shall also be able to add a PEG Channel to any of the Mosaics.

If through technology changes or innovation in the future, the Grantee discontinues the use of Mosaic presentations for other Channels including broadcast channels and commercial cable/satellite Channels (such as the News Mosaic, the Sports Mosaic, and/or the Children's Mosaic), then Grantee will either continue to support the Quad Cities Mosaic Channel as determined in the Commission's sole discretion or reach mutual agreement with the Commission regarding how to accommodate the Quad Cities Mosaic Channel to ensure PEG Channels are treated no less favorably than commercial channels provided by Grantee.

- 6.1.6** Grantee will make its electronic programming guide vendor ("EPG provider") available giving the Commission or City the ability to place PEG channel programming information on the Grantee's interactive channel guide. Grantee will be responsible for providing the designations and instructions necessary to ensure the channels will appear on the programming guide and for any System costs associated therewith. The Commission shall be responsible for providing programming information to the EPG provider and for any costs the EPG provider charges to programmers who utilize its service.

- 6.1.7** In the event the Grantee makes any change in the System or related equipment and facilities or in signal delivery technology, which change directly or indirectly causes the signal quality or transmission of PEG channel programming or PEG services to fall below technical standards under applicable law, the Grantee shall, at its own expense, provide any necessary technical assistance, transmission equipment, and training of PEG personnel, and in addition, provide necessary assistance so that PEG facilities may be used as intended, including, among other things, so that live and taped programming can be cablecasted efficiently to Subscribers. Grantee shall carry all components of the PEG Channels offered by the City and Commission including closed captioning, multichannel sound, DVR capability, etc.

- 6.1.8** All PEG channels shall be carried on the Basic Service tier.

## **6.2 PEG Support Obligations.**

- 6.2.1** In addition to the franchise fee required under this Franchise, the Grantee shall collect from Subscribers via an itemization on customer bills ("PEG Fee") and pay quarterly to the Commission an amount equal to three percent (3%) of its Gross Revenues. Payment of the PEG Fee shall be made to the Commission within thirty

(30) days of the end of each of the Grantee's fiscal quarters together with a report showing the basis for the computation. The Commission shall have the right to require further supporting information for each payment. All amounts paid under this paragraph shall be subject to audit and recomputation by the Commission in accordance with the rights provided to the City pursuant to Section 8.3 of this Franchise. In the event the PEG Fee amount or structure paid by the incumbent cable provider to the City or Commission is modified during the term of this Franchise, then the City shall so notify the Grantee of any such change and the parties will meet to determine if the Grantee's PEG Fee structure should be modified to ensure that Grantee's PEG Fee payment obligations hereunder do not exceed those of the incumbent cable provider.

**6.2.2** The Grantee and the City agree comply with any federal or State statutory change that entirely eliminates the Grantee's obligation to pay a franchise fee.

**6.2.3** The Grantee acknowledges that the franchise held by the incumbent franchised cable provider within the Franchise Area includes obligations for an Institutional Network for the benefit of the City and other institutions and to facilitate PEG uses of the I-Net. The parties acknowledge that the public interest would not be served by duplicating existing I-Net facilities or services provided under other franchises. Grantee agrees that if any other cable operator franchised within the Franchise Area provides additional I-Net facilities or services which results in additional costs incurred by such other franchised cable operator, the Grantee shall meet with the Commission upon request of the Commission to determine a fair and equitable contribution of I-Net facilities by the Grantee to proportionately match said I-Net obligations. If the City and Grantee are not able to reach mutual agreement to resolve this issue, the Grantee and the City agree to enter into a binding mediation to determine a fair and equitable contribution by the Grantee to proportionately match (on a per month, per subscriber basis) said I-Net obligations.

**6.3 Regional Channel 6.**

The Grantee shall designate standard VHF Channel 6 for uniform regional channel usage to the extent required by State law.

**6.4 Leased Access Channels.**

The Grantee shall provide Leased Access Channels as required by federal and State law.

**6.5 Universal Service Tier.**

The Grantee shall not have a Universal PEG Tier obligation until the first date by which Grantee is providing Cable Service to more than fifty percent (50%) of all subscribers receiving facilities based Cable Service from both the Grantee and any other provider(s) of Cable Service within the City. At that time, the City, in its reasonable discretion and after meeting with Grantee, shall determine the timeframe required to comply with the requirements of this Section 6.5.

## **6.6 Costs and Payments not Franchise Fees.**

The parties agree that any costs to the Grantee associated with the provision of support for PEG access pursuant too Section 6 of this Franchise does not constitute and is not part of a franchise fee and falls within one or more of the exceptions to 47 U.S.C. § 542.

## **SECTION 7. ACCESS CHANNEL DISTRIBUTION**

### **7.1 PEG Programming Connectivity.**

Grantee acknowledges that the City has acquired Institutional Network (I-Net) capacity, facilities, interconnection, services and resources from the incumbent franchised cable provider to, among other things, facilitate institutions' deliver of PEG programming to the Commission's master control facility. The I-Net capacity the City has acquired includes dedicated fiber capacity, facilities, interconnection, services and resources. Grantee shall provide additional connectivity for such PEG access programming purposes as provided herein, provided that the parties acknowledge that the public interest would not be served by duplicating existing I-Net facilities or services already provided under the incumbent's franchise. To the extent required for delivery of PEG programming due to elimination of I-Net capacity provided by the incumbent provider, Grantee shall provide and maintain, free of charge and without fees or costs imposed, a direct fiber connection from an agreed upon demarcation point at City Hall to the agreed upon demarcation point at the Commissions master control or Grantee's headend within 180 days of the City's written request.

### **7.2 Subscriber Network Drops to Designated Buildings.**

**7.2.1** Grantee shall provide, free of charge, installation and activation of one (1) subscriber network Drop, and one (1) outlet to the Commission's office. Grantee shall make best efforts to provide within a reasonable period time, taking market based success and Grantee's System expansion and Service activation progress into consideration, free of charge, one (1) subscriber network Drop, and one (1) cable outlet to City Hall. In addition, Grantee shall provide the foregoing free service and facilities to the institutions identified and designated for such facilities in Exhibit A, which is attached hereto and made a part hereof, provided such locations are Qualified Living Units and not receiving similar service from another provider.

**7.2.2** The Grantee shall provide Basic Cable Service free of charge to institutions as provided in Section 7.2.1, provided, however, that the City or Commission may disconnect the other provider and require Grantee to meet the obligations herein if the location is a Qualified Living Unit. Grantee shall provide up to three (3) Set Top Boxes per institution free of charge and may charge for additional Set Top Boxes provided, however, that Grantee will provide an additional five (5) Set Top Boxes to serve additional outlets at institutional locations at the Commission or

City's discretion, provided further, however, that City Hall will receive up to seven (7) Set Top Boxes free of charge. Grantee will provide free Service at City Hall even if the site is served by another provider. The Set Top Boxes or other equipment provided to receive Service shall permit reception of SD, HD and video on demand services.

**7.2.3** Institutions may add outlets at their own expense, as long as the Installation meets the Grantee's standards. The Grantee shall have three (3) months from the date of City designation of additional institution(s) to provide a Drop and outlet to a Qualified Living Unit that is not receiving similar service from another provider, unless weather or other conditions beyond the control of the Grantee require more time.

**7.2.4** Grantee agrees that if any broadband service is required in order to receive the Complimentary Service obligations set forth, Grantee will provide such broadband service free of charge for the provision of free Cable Service. Grantee agrees that it will not offset, deduct or reduce its payment of past, present or future Franchise Fees required as a result of its obligations required herein.

### **7.3 Broadband.**

Throughout the term of the Franchise, and as the term may be extended, Grantee shall provide the Commission high speed internet service with a modem and up to five (5) static IP addresses, with Grantee's highest available upstream bandwidth at such location ("Commission Broadband Service"), which may be used by the Commission for public use and various PEG purposes as determined in Commission's sole discretion. The Commission Broadband Service shall be provided by Grantee free of charge and at no cost to the Commission for both the monthly service and equipment.

### **7.4 Interconnection.**

7.4.1 The System serving the Commission and its Member Cities shall be completely interconnected.

7.4.2 Grantee shall provide a discreet, non-public, video interconnect network, from an agreed upon Demarcation Point at the Commission's master control facility at the Commission's office to Grantee's headend. The video interconnect network shall provide sufficient allocated bandwidth to allow PEG operators that have agreed with Grantee to share (send and receive) live and recorded programming for playback on their respective systems, provided that such allocated bandwidth shall be not less than 50 Mbps. Where available the Grantee shall provide the video interconnect network and the network equipment necessary, for the high-priority transport of live multicast HD/SD video streams as well as lower-priority file-sharing. Grantee shall provide sufficient bandwidth for each participating PEG entity to send its original programming, receive at least two (2) additional multicast HD/SD streams from any other participating PEG entity, and all the transfer of files. Each participating PEG entity is responsible for encoding its



own SD/HD content in suitable bit rates to be transported by the video interconnect network without exceeding the allocated bandwidth.

- 7.4.3 Grantee shall make available for Interconnection purposes one (1) channel for forward video purposes, one (1) Channel for return video purposes, between the System serving the City and all other Cable systems under common ownership with Grantee that participate in the Twin Cities Metro PEG Interconnect Network.

## **SECTION 8. OPERATION AND ADMINISTRATION PROVISIONS**

### **8.1 Administration of Franchise.**

The City's designated cable television administrator shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.

### **8.2 Delegated Authority.**

The City may appoint a citizen advisory body or may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. The Grantee shall cooperate with any such delegatee of the City.

### **8.3 Franchise Fee.**

**8.3.1** During the term of the Franchise, the Grantee shall pay quarterly to the City or its delegatee a Franchise fee in an amount equal to five percent (5%) of Gross Revenues.

**8.3.2** Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation. The City shall have the right to require further supporting information for each franchise fee payment.

**8.3.3** All amounts paid shall be subject to audit and recomputation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. The Grantee shall be responsible for providing the City all records necessary to confirm the accurate payment of franchise fees. The Grantee shall maintain such records for five (5) years, unless in the Grantee's ordinary course of business specific records are retained for a shorter period, but in no event less than three (3) years. If an audit discloses an overpayment or underpayment of franchise fees, the City shall notify the Grantee of such overpayment or underpayment. The City's audit expenses shall be borne by the City unless the audit determines that the payment to the City should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise. Any additional amounts due to the City as a result of the audit shall be paid to the City within thirty (30) days following written notice to the Grantee by the City of the

underpayment, which notice shall include a copy of the audit report. If the recomputation results in additional revenue to be paid to the City, such amount shall be subject to a ten percent (10%) annual interest charge. If the audit determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next quarterly payment.

- 8.3.4** In the event any franchise fee payment or recomputation amount is not made on or before the required date, the Grantee shall pay, during the period such unpaid amount is owed, the additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%).
- 8.3.5** Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability.
- 8.3.6** The franchise fee payments required by this Franchise shall be in addition to any and all taxes or fees of general applicability. The Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said franchise fee payments from or against any of said taxes or fees of general applicability, except as expressly permitted by law. The Grantee shall not apply nor seek to apply all or any part of the amount of said franchise fee payments as a deduction or other credit from or against any of said taxes or fees of general applicability, except as expressly permitted by law. Nor shall the Grantee apply or seek to apply all or any part of the amount of any of said taxes or fees of general applicability as a deduction or other credit from or against any of its franchise fee obligations, except as expressly permitted by law.
- 8.3.7** To the extent Grantee or its affiliates, including any affiliate owning all or part of the System, receives revenues for the provision of a discounted bundle of services that includes both Cable Services and non-Cable Services, such revenues shall be included in Grantee's Gross Revenues using a GAAP methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law (for example, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value). Such allocations shall be subject to review and challenge by the Commission or City.

Grantee reserves the right to change the allocation methodologies set forth in this section in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will give the Commission written notice of any such changes and Grantee shall, upon request or as part of any audit or review of franchise fee payments, document the change in allocation methodology.

Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties. The Commission and City reserve the right to challenge Grantee's calculation of Gross Revenues, including the

interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

**8.4 Access to Records.**

The City shall have the right to inspect, upon reasonable notice and during Grantee's administrative office hours, or require Grantee to provide within a reasonable time, on a confidential and proprietary basis, copies of any records maintained by Grantee or its Affiliates, including specifically Gross Revenues worksheets, and accounting and financial records maintained by Grantee which relate to compliance of System operations with this Franchise or other applicable law.

**8.5 Reports and Maps to be Filed with City.**

**8.5.1** The Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in a form and substance as required by City.

**8.5.2** The Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such other reports with respect to Grantee's operations pursuant to this Franchise as the City may require. The City shall use its best efforts to protect proprietary or trade secret information all consistent with state and federal law.

**8.5.3** The Grantee shall make available to the City the maps, plats and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall make available with the City updates of such maps, plats and permanent records as provided in Section 4 above.

**8.6 Periodic Evaluation.**

**8.6.1** The City may require evaluation sessions during any quarterly meeting as provided in Section 4 above.

**8.6.2** Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City deems relevant.

**8.6.3** As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible.

**SECTION 9.**

**GENERAL FINANCIAL AND INSURANCE PROVISIONS**

**9.1. Performance Bond.**

- 9.1.1** Within 30 days of the Effective Date, and at all times thereafter, until the Grantee has liquidated all of its obligations with the City and the Commission, the Grantee shall furnish a bond to the Commission in the amount of \$100,000.00 in a form and with such sureties as are reasonably acceptable to the Commission. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the Commission or City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City or the Commission which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by the City and the Commission with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond.
- 9.1.2** The time for Grantee to correct any violation or liability shall be extended by City if the necessary action to correct such violation or liability is, in the sole determination of City, of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30)-day cure period and thereafter uses reasonable diligence to correct the violation or liability.
- 9.1.3** In the event this Franchise is revoked by reason of default of Grantee, City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by City as a result of said default or revocation.
- 9.1.4** Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the Franchise or revocation for default thereof, provided City or the Commission has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.
- 9.1.5** The rights reserved to City or Commission with respect to the performance bond are in addition to all other rights of City or Commission whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right City or the Commission may have.

**9.2. Letter of Credit.**

- 9.2.1** Within 30 days of the Effective Date, the Grantee shall deliver to the Commission an irrevocable and unconditional Letter of Credit, in a form and

substance acceptable to the Commission, from a National or State bank approved by the Commission, in the amount of \$25,000.00.

- 9.2.2** The Letter of Credit shall provide that funds will be paid to the City upon written demand of the City, and in an amount solely determined by the City in payment for penalties charged pursuant to this Section, in payment for any monies owed by the Grantee to the City or any Person pursuant to its obligations under this Franchise, or in payment for any damage incurred by the City or any Person as a result of any acts or omissions by the Grantee pursuant to this Franchise.
- 9.2.3** In addition to recovery of any monies owed by the Grantee to the City or any Person or damages to the City or any Person as a result of any acts or omissions by the Grantee pursuant to the Franchise, the City in its sole discretion may charge to and collect from the Letter of Credit the following penalties:
- 9.2.3.1** For failure to timely complete the System construction as provided in this Franchise, unless the City or the Commission approves the delay, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.2** For failure to provide data, documents, reports or information or to cooperate with City or the Commission during an application process or system review or as otherwise provided herein, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.3** Fifteen (15) days following notice from City or Commission of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.4** For failure to provide the services and the payments required by this Franchise, including, but not limited to, the implementation and the utilization of the PEG Access Channels, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.5** For Grantee's breach of any written contract or agreement with or to the City or the Commission, the penalty shall be \$250.00 per day for each day, or part thereof, such breach occurs or continues.
- 9.2.3.6** For failure to comply with any of the provisions of this Franchise, or other City ordinance for which a penalty is not otherwise specifically provided pursuant to this subsection 9.2.3, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.4** Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed; provided, however, that

Grantee will not be charged under more than one penalty provision for each separate violation.

- 9.2.5** Whenever the City or the Commission determines that the Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in subsection 9.2.3 above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the determination of the City or the Commission, is necessary to cure the alleged violation) following local receipt of notice, provided the Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of the City the City may draw from the Letter of Credit all penalties and other monies due the City from the date of the local receipt of notice.
- 9.2.6** Prior to drawing on the Letter of Credit, the City or the Commission shall give Grantee written notice that it intends to draw, and the Grantee may, within seven (7) days thereafter, notify the City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by the Grantee to the City shall specify with particularity the matters disputed by Grantee. All penalties shall continue to accrue, but the City or the Commission may not draw from the Letter of Credit during any appeal pursuant to this subparagraph 9.2.6.
- 9.2.6.1** City or the Commission shall hear Grantee's dispute within sixty (60) days and the City shall render a final decision within sixty (60) days thereafter. Withdrawal from the Letter of Credit may occur only upon a final decision.
- 9.2.7** If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in subsection 9.2.1 of this Section.
- 9.2.8** If the City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, the Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to the City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 9.2.1 as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any withdrawals from the Letter of Credit.
- 9.2.9** If any Letter of Credit is not so replaced or replenished, the City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as the City determines in its sole discretion. The failure to replace or replenish any Letter of Credit may also, at the option of the City, be deemed a default by the Grantee under this Franchise. The drawing on the Letter of Credit by the City, and use of the money so obtained for payment or performance of the obligations, duties and

responsibilities of the Grantee which are in default, shall not be a waiver or release of such default.

**9.2.10** The collection by City of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to it, nor shall any act, or failure to act, by the City pursuant to the Letter of Credit, be deemed a waiver of any right of the City pursuant to this Franchise or otherwise.

**9.3 Indemnification of City.**

**9.3.1** The City and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the System or as to any other action of Grantee with respect to this Franchise.

**9.3.2** Grantee shall indemnify, defend, and hold harmless the City and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the City's exercise, administration, or enforcement of the Franchise.

**9.3.3** In addition, Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in the form of Exhibit \_\_, which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City in granting this Franchise. This obligation includes any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the city or that this Franchise does not satisfy the requirements of applicable state law(s). Grantee shall additionally indemnify, defend, and hold harmless City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the City's exercise, administration, or enforcement of the Franchise. On or before the Effective Date, Grantee shall execute a separate indemnity agreement in a form acceptable to the City, which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City in granting this Franchise. This obligation includes any claims by the incumbent cable operator against the City that the terms and conditions of this Franchise are less burdensome than the incumbent's franchise, or that this Franchise does not satisfy the requirements of applicable state law(s).

- 9.3.4.** Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regrading, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.
- 9.3.5** The Grantee shall not be required to indemnify the City for negligence or misconduct on the part of the City or its officers, boards, committees, commissions, elected or appointed officials, employees, volunteers or agents, including any loss or claims.
- 9.3.6** Related only to PEG programming, the Grantee shall not be required to indemnify the City for negligence or misconduct on the part of the City or its officers, boards, committees, commissions, elected or appointed officials, employees, volunteers or agents, including any loss or claims.

#### **9.4 Insurance.**

- 9.4.1** As a part of the indemnification provided in this Franchise, but without limiting the foregoing, Grantee shall file with Commission at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, that covers broadcaster's liability and contractual liability coverage, in protection of the Grantee, the Commission, the City and its officers, elected and appointed officials, boards, commissions, commissioners, agents, employees and volunteers for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City and the Commission as an additional insured, and in their capacity as such, City and Commission officers, elected and appointed officials, boards, commissions, commissioners, agents, employees and volunteers. The broadcasters/cablecasters' liability coverage specified in this provision shall be subject to this Franchise regarding indemnification of the City.
- 9.4.2** The policies of insurance shall be in the sum of not less than \$ 1,500,000.00 for personal injury or death of any one Person, and \$ 2,000,000.00 for personal injury or death of two or more Persons in any one occurrence, \$ 1,500,000.00 for property damage to any one person and \$ 2,000,000.00 for property damage resulting from any one act or occurrence.
- 9.4.3** The policy or policies of insurance shall be obtained from a company licensed to do business in Minnesota. The Grantee shall provide a certificate of insurance coverage to the City. The policy shall either state that the City shall be notified in writing by the insurer thirty (30) days in advance of any cancellation or termination of such policy or, in the alternative, Grantee shall provide immediate written notice to the City if a cancellation or termination notice is received by Grantee and Grantee shall thereafter undertake immediate steps to secure a replacement policy meeting the requirements set forth herein.



**9.4.4** Grantee shall keep on file with the Commission Certificates of Insurance.

**9.4.5** Failure to comply with the insurance requirements of this Section shall constitute a material violation of this Franchise.

## **SECTION 10.**

### **SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE**

#### **10.1. City's Right to Revoke.**

**10.1.1** In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that:

**10.1.1.1** Grantee has violated material provisions(s) of this Franchise; or

**10.1.1.2** Grantee has attempted to evade any of the provisions of the Franchise; or

**10.1.1.3** Grantee has practiced fraud or deceit upon City or the Commission.

City may revoke this Franchise without the hearing required by Section 10.2.2 herein if Grantee is adjudged a bankrupt entity.

#### **10.2. Procedures for Revocation.**

**10.2.1** The City shall provide the Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required herein, the City shall provide the Grantee with the basis for revocation.

**10.2.2** The Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subparagraph 10.2.1 above. The City shall provide the Grantee with written notice of its decision together with written findings of fact supplementing said decision.

**10.2.3** Only after the public hearing and upon written notice of the determination by the City to revoke the Franchise may the Grantee appeal said decision with an appropriate state or federal court or agency.

**10.2.4** During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

#### **10.3. Abandonment of Service.**

The Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. The Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment, including all costs incident to removal of the System, if required by the City pursuant to Section 10.4.

**10.4. Removal After Abandonment, Termination or Forfeiture.**

**10.4.1** In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require the Grantee to remove all or any portion of the System used exclusively for the provision of Cable Service from all Rights-of-Way and public property within the City.

**10.4.2** If the Grantee has failed to commence removal of the System, or such part thereof as was designated by the City, within thirty (30) days after written notice of the City's demand for removal is given, or if the Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the City shall have the right to apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title, and interest to the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

**10.5. Sale or Transfer of Franchise.**

**10.5.1** No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with the City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. Upon notice to the City, Grantee may undertake legal changes necessary to consolidate the corporate or partnership structures of its System provided there is no change in the controlling interests which could materially alter the financial responsibilities for the Grantee and provided Grantee must seek approval of any transaction constituting a "fundamental corporate change" under state law.

**10.5.2** Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 10.5. The term "controlling

interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. In any event, as used herein, a new "controlling interest" shall be deemed to be created upon the acquisition through any transaction or related group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one Person. Acquisition by one Person of an interest of five percent (5%) or more in a single transaction shall require notice to the City.

- 10.5.3** The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following:
- 10.5.3.1** All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof;
  - 10.5.3.2** A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the FEC, the SEC or MnDOT. Upon request, Grantee shall provide City with a complete copy of any such document; and
  - 10.5.3.3** Any other documents or information related to the transaction as may be specifically requested by the City.
- 10.5.4** The City shall have such time as is permitted by federal law in which to review a transfer request.
- 10.5.5** Grantee shall reimburse City for all the reasonable legal, administrative, consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its Subscriber rates.
- 10.5.6** In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subsections 10.5.1 or 10.5.2 of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder.
- 10.5.7** In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subsection 10.5.1 or 10.5.2, the City shall have the right to purchase the System for the value of the consideration proposed in such transaction. The City's right to purchase shall arise upon City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to City in writing and separate from any general announcement of the transaction.
- 10.5.8** The City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:

**10.5.8.1** If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 10.5.7 above, its intention to exercise its right of purchase; or

**10.5.8.2** It approves the assignment or sale of the Franchise as provided within this Section.

**10.5.9** No Franchise may be transferred if the City determines the Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise.

**10.5.10** Any transfer or sale of the Franchise without the prior written consent of the City shall be considered to impair the City's assurance of due performance. The granting of approval for a transfer or sale in one instance shall not render unnecessary approval of any subsequent transfer or sale for which approval would otherwise be required.

## **SECTION 11. PROTECTION OF INDIVIDUAL RIGHTS**

### **11.1 Discriminatory Practices Prohibited.**

Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, State, and city laws.

### **11.2. Subscriber Privacy.**

**11.2.1** No signals, including signals of a Class IV Channel, may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

**11.2.2** No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to City for the purpose of Franchise administration, and also to the Subscriber

subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

**11.2.3** Written permission from the Subscriber shall not be required for the conducting of System-wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subsection 11.2.2.

## **SECTION 12. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS**

### **12.1 Unauthorized Connections or Modifications Prohibited.**

It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or to receive services of the System without Grantee's authorization.

### **12.2 Removal or Destruction Prohibited.**

It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper with, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights the City may have pursuant to this Franchise or its police powers.

## **SECTION 13. MISCELLANEOUS PROVISIONS**

### **13.1 Franchise Renewal.**

Any renewal of this Franchise shall be performed in accordance with applicable federal, State and local laws and regulations.

### **13.2 Work Performed by Others.**

All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. The 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.

### **13.3 Amendment of Franchise Ordinance.**

The 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 the City and the Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in applicable law, provided, however, nothing herein shall restrict the City's exercise of its police powers or the City's authority to unilaterally amend Franchise provisions, except the provisions of Section 4 to the extent permitted by law.

### **13.4. Compliance with Federal, State and Local Laws.**

**13.4.1** If any federal or State law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to State laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.

**13.4.2** In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

**13.4.3** If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the

provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City without further action by the City.

**13.4.4** The City and Grantee shall, at all times during the term of this Franchise, including all extensions and renewals thereof, comply with applicable federal, State and local laws and regulations.

**13.5 Nonenforcement by City.**

Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

**13.6 Rights Cumulative.**

All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

**13.7 Grantee Acknowledgment of Validity of Franchise.**

The 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.

**13.8 Force Majeure.**

The Grantee shall not be deemed in default of provisions of this Franchise or the City Code where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods, or other causes beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee, when possible, takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible, under the circumstances, with the Franchise without unduly endangering the health, safety and integrity of the Grantee's employees or property, or the health, safety and integrity of the public, the Rights-of-Way, public property or private property.

**13.9 Governing Law.**

This Franchise shall be governed in all respects by the law of the State of Minnesota.

**13.10 Captions and References.**

**13.10.1** The captions and headings sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of this Franchise. Such captions shall not affect the meaning or interpretation of this Franchise.

**13.10.2** When any provision of the City Code is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the City Code that may also govern the particular matter in question.

**13.11 Rights of Third Parties.**

This Franchise is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, unless expressly provided herein.

**13.12 Merger of Documents.**

This Franchise, and the attachments hereto, constitute the entire Franchise agreement between the City and the Grantee, and supersede all prior oral or written franchises and understandings.

**SECTION 14.**

**PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

**14.1 Publication.**

This Franchise shall be published in accordance with applicable local and Minnesota law.

**14.2 Acceptance.**

**14.2.1** Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council and the enactment of a Franchise by the other member municipalities of the Commission, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to the Grantee shall be null and void.

**14.2.2** Upon acceptance of this Franchise, the Grantee and the City shall be bound by all the terms and conditions contained herein. The Grantee agrees that this Franchise is not inconsistent with applicable law or regulations at the time it is executed.

**14.2.3** Grantee shall accept this Franchise in the following manner:



**14.2.3.1** This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

**14.2.3.2** With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that are due but have not previously been delivered.

**14.3 Binding Acceptance.**

This Franchise shall bind and benefit the parties hereto and their respective authorized heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

Passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST: CITY OF RAMSEY, MINNESOTA

By: \_\_\_\_\_ By: \_\_\_\_\_  
Its: Mayor Its: City Administrator

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

QWEST BROADBAND SERVICES, INC.  
d/b/a CENTURYLINK

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Its: \_\_\_\_\_