

Section 1321 CABLE FRANCHISE -Lake County, MN

This Franchise ("Franchise") is between the City of Silver Bay, Minnesota, a municipal corporation and political subdivision organized and existing under the laws of the State of Minnesota, hereinafter referred to as "the Franchising Authority" and Lake County, a body politic and corporate and political subdivision organized and existing under the laws of the State of Minnesota, hereinafter referred to as "the Grantee."

The parties hereby acknowledge they have entered into a Joint Powers Agreement pursuant to Minnesota Statute §§ 471.59 and 471.656 with Grantee and other municipalities, for the construction and operation of a fiber-optic broadband network in the jurisdictional limits of the Franchising Authority. The Franchising Authority acknowledges in accordance with the Joint Powers Agreement that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

1321.01 Definition of Terms

For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. 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, and words in the singular number include the plural number. The word "may" is directory and discretionary and not mandatory; the words "shall" and "will" are mandatory and not merely directory or discretionary:

A. "Applicable Laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

B. "Basic Cable Service" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals and unless otherwise stated herein, 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).

- C. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
- D. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
- E. "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC. Cable Channel as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(4).
- F. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.
- G. "Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.
- H. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- I. "Franchising Authority" or "City" means the City of Silver Bay, Minnesota.
- J. "Franchise Fee" or includes any tax, fee, or assessment of any kind required by this agreement and collected from subscribers.
- K. "Grantee" means Lake County, or the lawful successor, transferee, or assignee thereof.
- L. "Gross Revenue" means any and all revenue derived by Grantee from the operation of its Cable System to provide Cable Service within the City including, but not limited to, 1) all Cable Service fees, 2) late fees and returned check fees, 3) Installation and reconnecting fees, 4) upgrade and downgrade fees, 5) local, state and national advertising revenue, 6) home shopping commissions, 7) equipment rental fees, and 8) guide revenue. The term "Gross Revenue" shall not include bad debts or any taxes or fees on Services furnished by Grantee imposed upon Subscribers by any municipality, state or other governmental unit, including the FCC regulatory fee, credits, refunds and any amounts collected from Subscribers for deposits, PEG fees or PEG support. City and Grantee acknowledge and agree that Grantee will maintain its books and records in accordance with generally accepted accounting principles (GAAP).
- M. "PEG" means public, educational, and government access video programming.

N. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

O. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, laue, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.

P. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

Q. "Service Interruption" means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as define herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.

R. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

S. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

1321.02 Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area; and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the

event of a conflict between any ordinance and this Franchise, the Franchise shall control.

2.3 Other Authorizations. The Franchising Authority shall not permit any person to provide the services similar to those provided by the Grantee in the Service Area without first having secured a non-exclusive franchise from the Franchising Authority. The Franchising Authority agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Franchising Authority to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of this Franchise, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal, are not more burdensome and/or less favorable than those contained in any such additional franchise(s) or authorizations. In addition to the foregoing, the Franchising Authority in consideration of the benefits conferred upon it by the Grantee's investment in the cable related needs and interests of the Franchising Authority, the Franchising Authority agrees that neither it nor any utility under its control and/or ownership commences provision of Cable Service in any part of Grantee's Service Area.

2.4 Previous Franchises. Upon acceptance by Grantee as, this Franchise shall supersede and replace any previous ordinance or other authorization granting a franchise to Grantee. This Franchise constitutes the entire agreement between the City and Grantee regarding the subject matter hereof. This Franchise may not be amended without an appropriate written amendment signed by both parties.

2.5 Limitations of Franchise. This Franchise shall be nonexclusive and complies with franchise standards contained in Minnesota Statutes, Chapter 238. No privilege or exemption shall be granted or conferred by the Franchise granted hereunder except those specifically prescribed herein. Any privilege claimed under this Franchise by the Grantee in any Street, or other public property, shall be subordinate to any prior lawful occupancy of the Streets, or other public property. This Franchise shall be a privilege to be held in personal trust by the Grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, merger, consolidation, or otherwise, without prior consent of the Council expressed by resolution, and then only under such conditions as may be therein prescribed. The said consent of the City may not be arbitrarily refused provided, however, the proposed assignee must show financial and technical responsibility and any new grantee must agree to comply with all provisions of this Franchise; and provided, further, that no such consent shall be required for a transfer in trust, mortgage or other hypothecation as a whole, to secure an indebtedness. The provisions of 47 U.S.C. §533 and §537 and Minn. Stat. § 238.083 shall apply to all such transactions. The inclusion of new or different general partners in the partnership shall be deemed a partial transfer or sale of the Franchise.

Time shall be of the essence of this Franchise. The Grantee shall not be relieved of its obligation to comply promptly with any of the provisions of this Franchise or by any failure of the City to enforce prompt compliance.

Any recourse the Grantee may have against the City for any loss, cost, expense or damage arising out of any provisions or requirements of this Franchise, or its enforcement, shall be consistent with the limitations of franchising authority liability provided for in the Cable Communications Policy Act of 1984, as amended.

This Franchise shall not relieve the Grantee of any obligation involved in obtaining pole space from any department of the City, utility company or from others maintaining poles in Streets.

The Grantee and the City agree that each of them will conform to Applicable Laws upon their respective effective dates or when compliance is required by the law, whichever is later.

2.6 Performance Bond. The Grantee shall maintain in full force and effect for the term of this Franchise, at Grantee's sole expense, a standard form corporate surety bond to be approved by the City Attorney, which approval shall not be reasonably withheld, in the amount of Fifty Thousand and No/100 Dollars (\$50,000) ("Performance Bond"). The Performance Bond shall be conditioned upon the Grantee's compliance with all of the terms and provisions of this Franchise. There shall be recoverable jointly and severally from the principle and surety of the Performance Bond any damages or loss suffered by the City as a result of Grantee's failure to comply with the terms and provisions of the Franchise, including the full amount of any compensation, indemnification or other costs or liabilities of removal or abandonment of any property of Grantee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the Performance Bond, and further guaranteeing payment by Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the system. The Performance Bond shall provide that thirty (30) days prior written notice be given to City of any cancellation or material change in the Performance Bond or of Grantee's intention not to renew.

Neither the provisions of this section, any Performance Bond accepted by the City pursuant thereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Grantee, or limit the liability of the Grantee under this Franchise for damages, either to the full amount of the Performance Bond, or otherwise. The City agrees to either return the original bond or sign the necessary documentation to release the bond promptly upon the expiration, termination or transfer of this Franchise.

Notwithstanding any other provision of this Franchise, the City does not waive and specifically reserves any and all rights it may have to pursue all legal and equitable remedies available to it under Applicable Law.

2.7 Insurance. At all times during the term of this Franchise, the Grantee shall maintain in full force and effect (at its own cost and expense) a commercial general liability insurance policy, including contractual liability coverage in a form satisfactory to the City attorney, protecting against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of Grantee under such Franchise, with minimum liability limits of Five Hundred Thousand and No/100 Dollars (\$500,000) per occurrence or combined single limit and One Million and No/100 Dollars (\$1,000,000) for excess liability coverage. Grantee shall furnish to City a certificate of insurance evidencing such coverage.

The certificate of insurance mentioned in the foregoing paragraph shall name the City, its officers, boards, commissions, agents and employees, as additional insured and shall contain a provision that a written notice of any cancellation or failure to renew said policy shall be delivered to the City thirty (30) days in advance of the effective date thereof. If proof of such insurance is in the form of a so-called "Accord" form of certificate, the words, "endeavor to" shall be stricken from the notice provisions thereof.

This Franchise shall not be effective unless and until each of the foregoing policies of insurance as required in this section have been delivered to the City.

Nothing in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, regrading, or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system.

2.8 Emergency Use of Facilities. In the event of fire, disaster or other emergency, Grantee shall make available the System to City during the period of the emergency for the cablecasting of emergency announcements on government access Channels, or at a minimum, in a manner consistent with Federal and State regulations. Upon notice to Grantee, City may also cut or move any of Grantee's wires, cables, amplifiers, appliances or other component of the System as may be reasonably determined by City in the event of fire, disaster or other emergency. Grantee waives any claim against City arising from City's exercise of these rights.

1321.03 Standards of Service

3.1 Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Use and Restoration of Public Ways. Grantee shall not dig into or disturb the surface of and Public Way without obtaining prior written permission from the City Street Superintendent. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation for the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

3.4 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System, provided the City is given reasonable advance written notice of such trimming..

3.6 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code.

3.7 Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

3.8 Access to Open Trenches. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench; and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

3.9 Required Extensions of the Cable System. Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

3.10 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.11 Cable Service to Public Buildings.

Grantee shall provide free of charge throughout the term of this Franchise, Installation of one (1) network Drop, one (1) cable outlet, and one (1) Converter n, if necessary, and the most highly penetrated level of Cable Service (i.e. the equivalent of the Basic and Expanded Basic Service tiers) offered by Grantee, excluding pay-per-view, pay-per-channel (premium) programming, high-speed data services or newly created non-video Cable Services, without charge to the institutions identified on Exhibit A attached hereto and made a part hereof, and accredited public and private school buildings subsequently

designated by City. This requirement shall not include any digital tier of services Grantee may offer unless and until such time as Grantee's digital programming reduces the amount of spectrum available for analog programming to less than approximately sixty (60) Channels of analog programming. Grantee shall be responsible for the costs of extensions to subsequently designated institutions for the first two hundred (200) feet as measured from Grantee's nearest active plant. The institution shall pay the net additional Drop or extension costs beyond the two hundred (200) feet.

Additional outlets in any of the locations identified on Exhibit A will be installed by Grantee at the rate card price current for the City of Silver Bay customers. Alternatively, said institutions may add outlets at their own expense, as long as such Installation meets Grantee's standards and approval which shall not be unreasonably withheld. Grantee shall have three (3) months from the date of City designation of additional accredited schools or public institutions or relocations to complete construction of the Drop and the outlet unless weather or other conditions beyond the control of Grantee requires more time.

The Cable Service provided pursuant to this section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public (i.e. "open display"). The City shall take reasonable precautions to prevent any use of the Grantee's Cable System that results in the inappropriate use thereof or any loss or damage to the Cable System. Grantee shall provide City with reasonable advance written notice if Grantee becomes aware of any open display in violation of this Section 21(c). The City shall hold the Grantee harmless from any and all liability or claims by programmers arising out of the open display of Cable Service in violation of this Section 21(c).

3.12 Live Broadcast Facilities and Two-Way Network. Grantee shall, at no cost to City unless otherwise specified herein, provide a return connection to facilitate the exchange of programming, including live cablecasting of programming from those locations identified in Exhibit B, attached hereto and made a part hereof.

The City and Grantee agree that Grantee shall, on or before December 31, 2012, complete all construction work to facilitate live cablecasting from the City Hall to the Service Area. Grantee and City shall agree on a date for completion of additional construction to facilitate live cablecasting capabilities from other locations on Exhibit B, but in any case will not exceed September 30, 2015 from the time of request by the City.

The City shall be responsible for all terminal equipment at City Hall and at each location listed in Exhibit B, including any optical transmitters within the City facilities and all necessary production equipment the City may choose to utilize. The Grantee shall have all rights under federal law to pass through and collect from Subscribers its costs associated with providing the two-way capability as well as any head end equipment which Grantee may be required to purchase to permit the transmission of the signal on to the System for viewing by Subscribers. Any and all payments or costs