

Revised
ORDINANCE NO. 38

AN ORDINANCE GRANTING A FRANCHISE TO PAUL BUNYAN RURAL TELEPHONE COOPERATIVE IN THE CITY OF COHASSET; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR CERTAIN SERVICE REGULATIONS; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN

The City of Cohasset ordains:

Section I.
Statement of Intent and Purpose

The City intends, by the adoption of this Franchise, to issue a franchise ordinance. The provision of competitive cable service over an Open Video System can contribute significantly to the communication needs and desires of residents of the City. Further, the City may achieve better utilization and improvement of public services with the development.

Section II.
Definition of Terms

1. Terms. For purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

- a. “Affiliate” means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.
- b. “Cable Service” means: the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (iii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- c. “Channel” means a single full motion video channel.
- d. “City” means the City of Cohasset, Minnesota.
- e. “Competition” means the existence of two (2) or more entities offering Cable Service to substantially the same potential customers in the City pursuant to franchises.
- f. “Drop” means the wire that connects the network interface device (NID) on the Subscriber’s residence or business to the serving pedestal.

- g. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- h. “Franchise” means this ordinance and the contractual relationship established hereby.
- i. “Franchise Fee” means the fee or assessment imposed by the City on a Grantee solely because of its status as a franchisee. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability; (ii) capital costs which are required by this Franchise related to the provision of public, educational, or governmental access facilities; (iii) requirements or charges incidental to awarding or enforcing this Franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages, or other regulatory costs specifically required herein in addition to the Franchise Fee; (iv) any fee imposed under Title 17 of the United States Code.
- j. “Grantee” is Paul Bunyan Rural Telephone Cooperative, its agents and employees, lawful successors, transferees or assignees.
- k. “Gross Revenues” means all revenues received by the Grantee or its Affiliates from operation of the Open Video System to provide Cable Service to Subscribers in the City; provided, however, that such phrase shall not include: 1) fees or other receipts derived by Grantee’s carriage of unaffiliated providers’ Cable Service as required by law pursuant to Grantee’s Open Video System obligations; 2) revenues or other receipts derived from the provision or transport of telecommunications or information services as defined in state or federal law including the provision or transport of data and Internet access; 3) any taxes, fees, charges or Universal Service contributions on Cable Services imposed directly or indirectly on any Subscriber by any governmental unit or agency.
- l. “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers.
- m. “Open Video System” means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, provided that the FCC has certified that such system complies with Subpart S of Part 76 of its rules (47 C.F.R. §§ 76.1500-76.1514).

- n. “PEG Access” means public, educational, governmental and other public interest programming channels, equipment, facilities, funding, or operations as the context may require.
- o. “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- p. “Right-of-Way” or “Rights-of-Way” means the area on, below, or above any real property in the City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including other dedicated Rights-of-Way easement or right-of-way now or hereafter held by the City.
- q. “Right-of-Way Ordinance” means an ordinance adopted by the City creating requirements regarding regulation, management and use of Rights-of-Way, including registration and permitting requirements.
- r. “Subscriber” means any Person who lawfully receives Cable Service from Grantee.

Section III.

Grant of Franchise

1. Findings of Council. In the review of the franchise application by the Grantee and negotiations related thereto, and as a result of a public hearing, the Grantee’s technical, financial, legal qualifications and ability were considered and approved in accordance with state and federal law. In addition, the Grantee’s plans for providing Cable Service were considered and found adequate and feasible. The Franchise granted herein is intended to comply in all respect with applicable Minnesota Statutes, federal laws and regulations.
2. Grant of Franchise.
 - a. This Franchise is granted pursuant to the terms and conditions contained herein. The Grantee shall have the continued right and privilege pursuant to this Franchise to provide Cable Service and construct, reconstruct, operate and maintain an Open Video System in the Rights-of-Way in the City. By agreeing to use of the term “Cable Service” in this Franchise, the Grantee does not acknowledge or concede that its Open Video System constitutes a “cable communications system” under Minnesota Statutes Chapter 238.
 - b. Use of the Rights-of-Way to operate a Open Video System and provide Cable Service shall not be inconsistent with the terms and conditions by

which such Rights-of-Way were created or dedicated and is subject to all legal requirements related to the use of such Rights-of-Way, including the terms and conditions of the Right-of-Way Ordinance.

- c. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City in its sole opinion 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 street.
 - d. This Franchise shall be nonexclusive. Additional Franchises may be granted by the City.
3. Lease or Assignment Prohibited. Grantee shall not assign or lease its entire Open Video System channel capacity to an unaffiliated person without obtaining the prior written approval of the City. However, Grantee may carry and distribute the video programming of unaffiliated providers pursuant to its Open Video System obligations without providing advance notice to the City and without obtaining any approvals from the City.
4. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee.
5. Compliance with Applicable Laws, Resolutions and Ordinances. The Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, local ordinance-making authority, and eminent domain rights of the City.
6. Franchise Area/Service Area.
 - a. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. In the event of annexation by City or as development occurs, any new development within the City shall become part of the territory for which this Franchise is granted and for which Cable Service is authorized.
 - b. Within ninety (90) days after the effective date of this Franchise, Grantee shall apply for all necessary governmental permits, licenses, certificates and authorizations which are required in the conduct of operating its Open Video System.
 - c. A map identifying the Grantee's current telephone service area within the City is attached hereto and incorporated herein by reference as Exhibit A. The Grantee shall be required to offer Cable Service to all dwellings, homes and businesses within its current service area within the City.
 - d. A map identifying the service area within the City which the Grantee will extend its Open Video System and offer Cable Service to within one (1)

year of being granted this Franchise and all other necessary governmental permits, licenses, certificates and authorizations is attached hereto and incorporated herein by reference as Exhibit B.

- e. Cable Service shall not be denied to any group of potential residential Subscribers because of the income of the residents of the area in which such group resides.
- f. Grantee Shall promptly notify the City in writing of any delays known or anticipated from the schedule included above.
- g. The City may extend the schedule in the event Grantee, acting in good faith, experiences delays by reason of circumstances beyond its reasonable control or acts of God.

7. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or ninety-six (96) 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 Grantor: City of Cohasset
City Clerk
305 NW First Avenue
Cohasset, MN 55721

With copy to: Kent E. Nyberg
Cohasset City Attorney
20 NE Fourth Street, Suite 101
Grand Rapids, MN 55744

If to Grantee: Paul Bunyan Telephone
Attn: Video Services Coordinator
1831 Anne St. NW
Bemidji, MN 56601

With copy to: Paul Bunyan Telephone
Attn: General Manager
1831 Anne St. NW
Bemidji, MN 56601

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

Section IV.

Construction Standards

1. Right of Way Ordinance.

Grantee's telecommunications lines will be constructed in accordance with applicable state and local construction, zoning, and safety requirements including any Right-of-Way Ordinance, and will be operated in compliance with such requirements.

Section V.

System Design

1. Channel Capacity.

- a. Grantee shall provide for the term of this Franchise an Open Video System which is capable of delivering a minimum of 250 digital video channels, and actually delivers a minimum of 100 video channels.
- b. All Cable Service programming decisions will be made by Grantee, subject to its responsibilities under federal law as an Open Video System operator. The initial broad categories of Cable Service are set forth in Exhibit B, attached hereto and incorporated herein by reference. The Grantee shall notify the City and Subscribers in writing thirty (30) days prior to any channel deletions. Grantee may notify Subscribers of deletions via text messages transmitted on its Open Video System but shall notify the City in writing. Any change in the location of the access channels shall require the written consent of City, which may not be unreasonably withheld. Grantee shall conduct programming surveys from time to time to obtain input on its Cable Service decisions from Subscribers.

2. Emergency Override/EAS Requirements. The Grantee will implement emergency alert override capability consistent with all applicable federal and state regulations. The Grantee shall immediately, upon request, make its system and Cable Service capabilities available to the City in the event of a local emergency. At minimum, the Grantee shall ensure that all channels are capable of carrying a brief System-specific message upon demand, consistent with federal law.

Section VI.

Customer Service

1. Enforcement of Customer Service and Technical Standards. In the event there is Competition in the City, the City shall stay enforcement of this Section VI. The City may initiate enforcement of this Section by Resolution of the City Council. The Resolution shall indicate the basis for the City's determination that Competition in the City has ceased. A copy of such Resolution shall be mailed to

Grantee. The City shall ensure that Grantee is provided thirty (30) days notice, either from a Subscriber or City, to address complaints prior to City taking any enforcement action.

2. Provision of Services. The Grantee shall render good quality Cable Service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice to the City and Subscribers and shall occur during periods of minimum use of Cable Service.
3. Technical Standards. The technical standards applicable to Grantee's provision of Cable Service via analog technology shall comply, at minimum, with the technical standards promulgated by the FCC (47 C.F.R. 76.601 to 76.617), as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. With respect to Grantee's provision of Cable Service via digital technology, Grantee shall deliver channels without noticeable picture and sound degradation or distortion.
4. FCC Reports. Grantee shall file with City any required FCC technical reports which demonstrate signal quality. Further, Grantee shall summarize the results of any such testing provided to the City.
5. Regulation of Service Rates.
 - a. The City may regulate Subscriber rates for the provision of Cable Service over an Open Video System to the extent allowed under federal or state law(s).
 - b. A list of Grantee's current residential Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee shall give the City and Subscribers written notice of any change in a rate or charge in accordance with any applicable FCC requirements, unless such change arises from changes in regulatory fees, franchise fees, access costs or franchise imposed costs.
6. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. Grantee shall have the right to market consistent with local ordinances and other applicable laws and regulations.
7. Telephone Inquiries and Complaints.
 - a. Availability Grantee will maintain local, toll-free or collect call telephone access lines which will be available to its Subscribers 24 hours a day, seven days a week. During Normal Business Hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries. Grantee will ensure that: (1) an adequate number of trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours, and; (2) after Normal

Business Hours, the access line will be answered by a trained company representative or a service or an automated response system such as an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

- b. Telephone Answer Time and Busy Signals Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed a reasonable wait time. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.
8. Installation, Outage and Service Calls. Under Normal Operating Conditions which will exclude the initial deployment period, each of the following standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis: (1) Excluding conditions beyond the control of Grantee which prevent performance, Grantee will begin working on service interruptions promptly, and in no event later than twenty-four (24) hours after the interruption becomes known, and Grantee must begin actions to correct other service problems the next business day after notification of the service problem and resolve such problems as soon as is reasonably possible; (2) The “appointment window” alternatives for Installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the convenience of the customer; (3) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment; (4) If a representative of Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time during Normal Business Hours which is convenient for the customer.
9. Complaint and Other Service Records Subject to Grantee’s obligation to maintain the privacy of certain information, Grantee shall prepare and maintain written records of all complaints received and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide the City with a written summary of such complaints and their resolution on a quarterly basis and in a form mutually agreeable to City and Grantee. Grantee may be required to provide detailed compliance reports on a quarterly basis with respect to the objectively measurable service standards herein upon written demand by the City.
10. Subscriber Contracts. Grantee shall provide to City upon request any standard form Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall provide a document completely and concisely stating the length and terms of the Subscriber contract offered to customers.

11. Billing and Subscriber Communications. Bills must be clear, concise, and understandable, with itemization including but not limited to, basic and premium charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.
12. Refunds and Credits. If Service is interrupted or discontinued for 24 or more consecutive hours and Grantee has notice of such interruption, Subscribers shall be credited at the Subscriber's request pro rata for such interruption beginning with the date of notice of interruption. Credits for will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. 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. Refund checks will be issued promptly, but no later than thirty (30) days from the return of the equipment supplied by the Grantee if Service is terminated. Grantee shall not be held responsible for interruptions caused by the negligence or willful act of the Subscriber, interruptions caused by subscriber-provided facilities or equipment, interruptions caused by electric power failure where the Subscriber furnishes such electric power, or interruptions in programming caused by content providers. No other liability shall attach to the Grantee in consideration of such interruption to service.
13. Late Fees. Fees for the late payment of bills shall not accrue until the normal billing cut-off for the next month's service approximately one (1) month after the unpaid bill in question was sent to the Subscriber.
14. Additional Customer Service Requirements. The City expressly reserves authority to adopt additional or modified customer service requirements to address subscriber concerns or complaints in accordance with federal law.
15. Violations. In the event enforcement of any provision in this Section is initiated by Council Resolution, any subsequent violation of such provision shall be a violation of this Franchise.
16. Letter of Credit.
 - a. In the event the City initiates enforcement of any provision of this Section VI. and determines that additional security is necessary or desirable to secure compliance with this Franchise, Grantee shall, upon written notice from the City, deliver to the City an irrevocable and unconditional Letter of Credit, in form and substance acceptable to the City, in the amount of \$10,000.
 - b. The Letter of Credit shall provide that funds will be paid to the City, upon written demand of the City, in payment for any monies owed by Grantee

pursuant to its obligations under this Franchise. The City may also, in its sole discretion, charge to and collect from the Letter of Credit liquidated damages in an amount of up to \$100.00 per violation of any provision of this Franchise or applicable federal, state, or local law or regulation as provided below. Such liquidated damages may be assessed per day for each day, or part thereof, such violation continues.

- c. The City shall provide a written notice of violation giving Grantee thirty (30) days in which to cure such violation. At any time after the cure period, provided Grantee remains in violation, the City may draw from the Letter of Credit.
- d. Grantee may notify the City in writing during the cure period that there is a dispute as to whether a violation or failure has in fact occurred. Grantee shall specify with particularity the matters disputed and the basis for dispute. The City shall hear Grantee's dispute at the next regularly scheduled Council meeting or within sixty (60) days of receipt of said notice of dispute, whichever is shorter. In the event City determines that a violation has taken place, such determination shall be deemed final, subject to Grantee's right to appeal such final determination to a court or forum of competent jurisdiction.
- e. If the City draws upon the Letter of Credit, Grantee shall replace the same within ten (10) days and shall deliver to the City a like replacement Letter of Credit.
- f. The drawing on the Letter of Credit shall not be a waiver or release of default and shall not be deemed an exclusive remedy.

18. Periodic Evaluation.

- a. The City may require evaluation sessions during the term of this Franchise not more than annually, upon thirty (30) days written notice to Grantee.
- b. All evaluation sessions shall be open to the public. Grantee shall notify its Subscribers of any evaluation sessions by announcement of at least sixty (60) seconds in duration on at least one (1)-Basic Service channel between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each session.
- c. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City and Grantee deem relevant.

- d. As a result of a periodic review or evaluation session, the City may request Grantee to amend the Franchise to provide additional services or facilities as are mutually agreed upon and which are both economically and technically feasible taking into consideration the remaining life of the Franchise.

SECTION VII.

INSTITUTIONAL SERVICES PROVISIONS

1. Public, Educational and Government Access.
 - a. PEG Channels, Services, Facilities and Equipment. The City will impose PEG obligations on the Grantee that are not more or less favorable nor more or less burdensome than those imposed on any other franchised provider of Cable Service on a per customer basis.
 - b. PEG Channels. Grantee shall dedicate four (4) channels for PEG Access use. Nothing herein shall diminish the City's rights to secure additional channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference. In lieu of the PEG access channels required by this Section, Grantee may, pursuant to and in accordance with 47 C.F.R. § 1505, negotiate with an existing cable franchisee serving the City for the transmission of all PEG channels carried by the existing franchisee on its system serving the City.
 - c. PEG Availability. Grantee shall provide to each of its Subscribers who receive all, or part of, the total Cable Services offered over its Open Video System, reception on the PEG Access channels at no additional charge. The specially designated access channels may be used by the public, local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channels are not being used by the public, educational authorities or local government, the Grantee may lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. Grantee may also use the specially designated access channels for local origination during those hours when the channel is not in use by the public, local educational authorities, local government, or commercial or noncommercial users who have leased time.
 - d. Charges for Use. Channel time and playback of prerecorded programming on the PEG access and community program channel(s) must be provided at no additional charge to the City and the public

- e. ICTV/GGRACC. Grantee shall negotiate in good faith and enter into a mutually acceptable agreement with Itasca Community Television (ICTV) and/or the Greater Grand Rapids Area Cable Commission (GGRACC) relating to the support, administration and operation of the access channels.
2. Service to Public Buildings. Grantee shall provide, free of charge, a Drop, outlet and monthly Cable Service (excluding premium and pay per view channels) to City Hall, and up to two (2) public buildings identified by the City. Any public institution may add outlets at its own expense. However, no redistribution of the free Cable Service provided pursuant to this Section shall be allowed without the Grantee's prior written consent.

SECTION VIII.

OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City shall have authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. The City Manager or his designee shall have continuing regulatory jurisdiction and supervision over the Services described herein and the Grantee's operation under this Franchise.
2. Franchise Fee.
 - a. During the term of the Franchise, Grantee shall pay to the City a Franchise Fee in an annual amount equal to five percent (5%) of its Gross Revenues.
 - b. Any payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each of Grantee's current fiscal quarters together with a report in form reasonably acceptable to City and Grantee and which shows the basis for the computation.
 - c. 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.
3. Access to Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, any records maintained by Grantee which relate to this Franchise or operations, including specifically Grantee's revenue records, subject to the privacy provisions of 47 U.S.C. § 521 et seq. Grantee shall be required to provide copies of such requested documents to the City unless such documents are confidential and are available for City inspection at a location in the City.

4. Reports to be Filed with the City. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Receipts certified by an officer of the Grantee. Grantee shall prepare and furnish to the City such other reports with respect to the operations, affairs, transactions or property, as they relate to this Franchise or Cable Services as City may request. The form of such reports shall be mutually agreed upon by City and Grantee. To the extent permitted by law, the City shall treat the Gross Receipts reports as confidential trade secrets and shall not make such reports publicly available or available to agents or employees of other video service providers.

SECTION IX.

GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Performance Bond.
 - a. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a performance bond to the City, in the amount of \$25,000 in a form and with such sureties as are reasonably acceptable.
 - b. The security must be conditioned upon the faithful performance of the Grantee according to the terms of the Franchise 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 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 which arise by reason of the construction, operation, or maintenance of its system in the City.
 - c. The rights reserved by the City with respect to the bond shall not be deemed an exclusive remedy are in addition to all other rights the City may have under the Franchise or any other law. No action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have. The City may, from year to year, in its sole discretion, reduce the amount of the bond.
 - d. The Grantee shall be given thirty (30) days notice of any franchise violation, or other claim, liability or obligation giving rise to City's right to make a claim under the bond. In the event the violation, claim, liability, or obligation is not cured, corrected or satisfied within this thirty (30) day cure period, in City's determination, the City may make a claim pursuant to the bond. The City may grant additional time beyond the initial cure

period before making a claim under the bond in the event Grantee requests additional time and the City determines that the Grantee has made a good faith effort towards cure and such additional time is necessary to completely cure the alleged violation.

- e. In the event this Franchise is revoked or the rights hereunder relinquished or abandoned by Grantee, the City shall be entitled to collect the full amount of the performance bond as liquidated damages.

2. Indemnification of the City.

- a. The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of Grantee's Open Video System.
- b. Grantee shall indemnify, defend, and hold harmless the 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 Grantee's exercise of this Franchise. Grantee's obligations herein shall not include any alleged or actual liability which is based solely on City's operation of PEG access facilities or equipment or the programming provided via such PEG facilities or equipment. Nothing herein shall be construed as a waiver by City of its defenses and limitations available to it under law, including the Minnesota Municipal Tort Liability Act, Minnesota Statutes Section 466.01 et. seq.
- c. Nothing in this Franchise relieves a Person, except the City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.
- d. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:
 - 1. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right.
 - 2. Afford Grantee the opportunity to participate in any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - 3. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in compromise, settlement or

resolution or other disposition of such claim or proceeding subject to Paragraph 2 above.

3. Insurance.

- a. Grantee shall file with 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, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for damages which may arise as a result of this Franchise.
- b. The policies of insurance shall be in the sum of not less than One Million Dollars (\$1,000,000.00) for personal injury or death of any one Person, and Two Million Dollars (\$2,000,000.00) for personal injury or death of two or more Persons in any one occurrence, Five Hundred Thousand Dollars (\$500,000.00) for property damage to any one person and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one act or occurrence.
- c. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the City.

SECTION X.

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required herein, it is determined that:
 - a. Grantee has violated any material provision of this Franchise and failed to timely cure; or
 - b. Grantee has attempted to evade any of the material provisions of the Franchise; or
 - c. Grantee has practiced fraud or deceit upon the City or Subscriber.

The City may revoke this Franchise without the hearing required herein if Grantee files for bankruptcy.

2. Procedures for Revocation.

- a. The City shall provide Grantee with written notice of intent to revoke the Franchise which shall identify the basis of the revocation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to cure the violation or to provide adequate assurance of performance in compliance with the Franchise.
 - b. City shall schedule a public hearing affording Grantee due process prior to revocation. The public hearing shall be scheduled after the end of the cure period and within ninety (90) days of the date of the notice of revocation. Notice of the hearing shall be provided to Grantee.
 - c. The City shall provide Grantee with written notice of its final decision together with written findings of fact supplementing said decision. Only after Grantee receives written notice of the determination by the City to revoke the Franchise may Grantee appeal said decision.
 - d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.
3. Abandonment of Service. Grantee may not discontinue providing Cable Service services without having first given three (3) months written notice to the City.
4. Removal After Abandonment, Termination or Forfeiture.
 - a. In the event of termination or forfeiture of the Franchise or abandonment of Grantee's Open Video System, the City shall have the right to require Grantee to remove all or any portion of its Open Video System from all Rights-of-Way and public property within the City; provided, however, that the Grantee shall not be required to remove its Open Video System if Grantee continues to be authorized to provide telecommunications service pursuant to state or federal law.
 - b. If Grantee has failed to commence removal of its Open Video System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written notice of the City demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City 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 Grantee's Open Video System to be in the City with all rights of ownership including, but not limited to, the right to operate the Open Video System or transfer the Open Video System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547.
5. Sale or Transfer of Franchise.
 - a. No sale, transfer, or corporate change of or in Grantee or its Open Video System, including, but not limited to, the sale of a majority of the entity's

assets, a merger including the consolidation of a subsidiary and parent entity, or the creation of a subsidiary or affiliate entity, shall take place until the parties to the sale, transfer, or corporate change file a written request with the City for its approval and such approval is granted by the City, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

- b. Any sale, transfer, exchange or assignment of stock or other equity interest in Grantee so as to create a new controlling interest shall be subject to the requirements of this Section X.5. The term “controlling interest” as used herein means actual working control in whatever manner exercised.
- c. The City shall have such time as is permitted by applicable federal law in which to review a transfer request, but in no event less than one hundred twenty (120) days.
- d. To the extent permitted by federal law, the Grantee shall reimburse City for all the legal, administrative, and 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.
- e. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to Subparagraph (a) or (b) of this Section be approved without any entity to which this franchise may be transferred becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City.
- f. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to Subparagraph (a) or (b) of this Section, the City shall have the right to purchase Grantee’s Open Video System provided, however, that the City shall not be permitted to purchase the Open Video System if Grantee continues to be authorized to provide telecommunications service pursuant to state or federal law.

SECTION XI.

PROTECTION OF INDIVIDUAL RIGHTS

- 1. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and local laws, and all executive and administrative orders relating to nondiscrimination.

2. Subscriber Privacy.

- a. Grantee shall comply with the subscriber privacy-related requirements of 47 U.S.C. § 551. 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. No penalty shall be invoked for a Subscriber's failure to provide such authorization. The authorization shall be revocable in writing at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.
- b. No 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 and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. No penalty shall be invoked for a Subscriber's failure to provide such authorization. The authorization shall be revocable in writing at any time by the Subscriber without penalty of any kind whatsoever.
- c. Written permission from the Subscriber shall not be required for the conducting of Open Video System-wide or individually addressed electronic sweeps for the purpose of verifying network integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in Subparagraph (b) of this Section.

SECTION XII.

MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
2. Work Performed by Others. All 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 Person performing work obtain any rights to provide Cable Service. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs services pursuant to this Franchise involving the Right-of-Way, public property or new construction or system upgrade.

3. Amendment of Franchise Ordinance. 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 or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws, provided, however, nothing herein shall restrict the City's exercise of its police powers.
4. Preemption. If any section, sentence, paragraph, term, or provision hereof is preempted or superceded by the FCC or any other agency with jurisdiction over the subject matter of this Franchise, then to the extent such agency's action shall preempt and supercede the City's jurisdiction, such section, sentence, paragraph, term, or provision shall be unenforceable.
5. Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction over the subject matter of this Franchise, then such provision shall be invalid and unenforceable.
6. Compliance with Federal, State and Local Laws. Grantee and the City shall conform to applicable state laws and rules not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding Open Video Systems as they become effective.
7. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented due to a cause beyond its control, such failure to perform shall be excused for the period of such inability to perform.
8. 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 the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the 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.
9. Rights Cumulative. All rights and remedies given to the City by this Franchise or retained by the City shall be in addition to and not exclusive of any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity.
10. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

SECTION XIII.

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication: Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section XIII, 2.
2. Acceptance.
 - a. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City, 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.
 - b. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein. 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 previously granted to Grantee shall be null and void.
 - c. Grantee shall accept this Franchise in the following manner:
 - i. This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.
 - ii. With its acceptance, Grantee shall also deliver performance bond and insurance certificates required herein that have not previously been delivered.

Passed and adopted this 13 day of April, 2004.

CITY OF COHASSET

Marian Barcus
MAYOR

ATTEST:

By: Debra Sakuson
Its Clerk

ACCEPTED: This Franchise is accepted and the undersigned agrees to be bound by its terms and conditions.

Dated: 4/16/04

~~PAUL BUNYAN RURAL TELEPHONE COOPERATIVE~~

By: Paul Frende

Its General Manager

Published in the _____ this ____ day of _____, 2004.