

**AN ORDINANCE
Of the
CITY OF
MINNEAPOLIS**

By Quincy

Amending Appendix H, Chapter 1 of the Minneapolis Code of Ordinances relating to Minneapolis Cable Communication Franchises: Cable Television Franchise Agreement Between City Of Minneapolis, Minnesota And Comcast Of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc.

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

Section 1. That Section 2.1 of the above-entitled ordinance be amended to read as follows:

2.1. - General Provisions.

(a) *Compliance with Minnesota Statutes.* This Franchise shall comply with all provisions contained in Minnesota Statutes Chapter 238, as amended.

(b) *Conformance with State and Federal Laws and Rules.* The City and Grantee shall conform to state laws and rules regarding cable communications no later than one (1) year after they become effective, unless otherwise stated. The City and Grantee shall conform to federal laws and regulations regarding cable as they become effective.

(c) *Franchise Term.* This Franchise shall commence on the Effective Date and Terminate December 31, 2021. Any subsequent renewal term of the Franchise shall be limited to not more than fifteen (15) years each. The City shall approve this Franchise through the passage of an ordinance by the City Council and approval of the Mayor, which shall be published in accordance with applicable local and Minnesota law. Within thirty (30) days after enactment of the ordinance granting approval of the Franchise, Grantee shall signify its acceptance of this Franchise by executing a written acceptance of this Franchise. The Effective Date shall be the date of acceptance by Grantee.

(d) *Nonexclusive Franchise.* This Franchise shall be nonexclusive. The City may grant additional franchises consistent with Minnesota Statutes Section 238.08, subdivision 1(b) and 47 U.S.C. § 541.

(e) *Franchise Transfer.* No sale or transfer of the franchise or sale or transfer of stock so as to create a new controlling interest under Minnesota Statutes § 238.083 shall occur without the approval of the City, which will not be unreasonably withheld, conditioned that the sale or transfer is completed consistent with Minnesota Statutes § 238.083. If allowed under state and federal law, Grantee shall pay all of City's reasonable costs in reviewing and acting upon a transfer application. If the cable communications system is offered for sale, the parties shall comply with any lawful requirements of applicable law regarding the City's right to purchase the Cable System.

(f) *Audit.* The City shall have the right to audit the Grantee's accounting and financial records required to calculate the City's franchise fees upon reasonable notice; provided, however, that any

such inspection shall take place within three (3) years from the date the City receives the payment, after which period any such payment shall be considered final. The Grantee shall file annual reports with the City detailing gross subscriber revenues and other information the City deems appropriate.

(g) *Public Inspection.* The Grantee shall make available for public inspection:

- (1) The length and terms of residential subscriber contracts;
- (2) The current subscriber charges; and
- (3) The procedure by which subscriber charges are established, unless such a provision is contrary to state or federal law.

(h) *Franchise Administration.* The City shall notify Grantee of the office or officer of the City responsible for the continuing administration of the Franchise.

(i) *Indemnification.* The Grantee shall indemnify, defend and hold harmless the City, its officers, boards, commissions, councils, elected officials, agents and employees (collectively the "Indemnitees") from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within thirty (30) calendar days of receipt of a claim or action pursuant to this section, or within fifteen (15) calendar days upon receipt of a lawsuit. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

(1) The Grantee's obligation to indemnify Indemnitees under this Franchise Agreement shall extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one (1) or more Indemnitees. However, in such case the obligation to indemnify shall be reduced in proportion to the negligence of the Indemnitees. An example of such reduction is as follows:

a. Assume an incident occurs for which the Grantee is eighty-five (85) percent at fault and Indemnitees are fifteen (15) percent at fault. The total amount due and owing a third party from the resulting claim is one hundred thousand dollars (\$100,000). The Grantee's obligation to indemnify is eighty-five (85) percent of one hundred thousand dollars (\$100,000), or eighty-five thousand dollars (\$85,000).

(j) *Insurance.* The Grantee shall carry insurance, and provide to the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this section, to protect the Grantee and the City from and against any and all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of the loss, injury, claim, or damage, in the following amounts:

(1) Commercial General Liability insurance with limits of at least one million dollars (\$1,000,000) general aggregate, one million dollars (\$1,000,000) products - completed operations one million

dollars (\$1,000,000) personal and advertising injury, fifty thousand (50,000) each occurrence fire damage and five thousand dollars (\$5,000) medical expense any one (1) person. The policy shall be on an "occurrence" basis, shall include Contractual liability coverage and the City shall be named an additional insured.

(2) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least five hundred thousand dollars (\$500,000) per accident.

The Grantee shall also carry insurance to protect it from all claims under workers' compensation laws in effect that may be applicable to it in the following amounts:

Workers Compensation insurance that meets the statutory obligations with Coverage B-Employers Liability limits of at least one hundred thousand dollars (\$100,000) each accident, five hundred thousand dollars (\$500,000) disease - policy limit and one hundred thousand dollars (\$100,000) disease each employee. Insurance required must remain in effect for the entire term of the agreement. Insurance secured by the Grantee shall be issued by insurance companies rated A or better by A.M. Best Company and admitted in Minnesota. If Grantee self-insures, Grantee shall certify annually that it has met all of the State of Minnesota requirements for self-insuring.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Grantee. Any policy deductibles or retention shall be the responsibility of the Grantee. The Grantee shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Grantee's interest or provide adequate coverage. Evidence of coverage is to be provided on an industry standard Insurance Certificate. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. The Grantee shall require any of its subcontractors to comply with these provisions.

(k) *Security.* The Grantee shall furnish a performance bond, letter of credit or security fund in the amount of five hundred thousand dollars (\$500,000) for compensation for damages resulting from the Grantee's nonperformance as specified in this Franchise.

(l) *No Relief from Liability.* Nothing in the Franchise shall be construed so as to relieve 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, regarding, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.

(m) *Qualifications Reviewed.* The City considered and approved the Grantee's technical ability, financial condition and legal qualifications in a full public proceeding that afforded reasonable notice and a reasonable opportunity to be heard.

(n) *Reserved.*

(o) *Permits.* Pursuant to applicable local law, the Grantee shall obtain a permit from the proper municipal authority before commencing construction on its cable communications system, including the opening or disturbance of a street, sidewalk, driveway, or public place. In the event that Grantee fails to meet the conditions of such a permit, the City may seek remedies under this Franchise Agreement.

(p) *Compliance with Code.* Wires, conduits, cable and other property and facilities of the Grantee shall be located, constructed, installed and maintained in compliance with applicable local laws. The Grantee must keep and maintain its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the franchise area or endanger the life or property of any person.

(q) *Removal and Relocation.* Unless otherwise provided for by local law, the City and the Grantee shall establish a procedure in the franchise for the relocation or removal of the franchisee's wires, conduits, cables, and other property located in the street, right-of-way, or public place whenever the City undertakes public improvements that affect the cable equipment except that the City may not discriminate among telecommunication rights-of-way users. Grantee shall be entitled to reimbursement of its relocation costs if made available to other users of the right-of-way for that project or projects.

(r) *Compliance with FCC Technical Standards.* The Grantee shall comply at a minimum with the technical standards promulgated by the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems and found in Code of Federal Regulations, Title 47, Sections 76.601 to 76.617, as amended from time to time. The results of tests required by the Federal Communications Commission will be available for onsite review by the City within ten (10) days of filing such tests with the FCC.

(s) *Cost of Special Testing.* The City may require special testing of a location or locations within the System if there is a particular matter of unresolved complaints regarding System construction, operations, signal quality, 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.

Before ordering such test, 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 Grantee and City shall determine who is to bear the costs of required special testing.

(t) *Subscriber Privacy.* No signals of a cable communications 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. The request for permission must be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one (1) year, which is renewable at the option of the subscriber. No penalty may be invoked for a subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the subscriber without penalty of any kind. Grantee shall further comply with 47 U.S.C. § 551, which is incorporated herein by reference.

(1) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or lists that identify the viewing habits of subscribers, may be sold or otherwise made available to any person other than to the company and its employees for internal business use, or to the subscriber who is

the subject of that information, unless the company has received specific written authorization from the subscriber to make the data available or unless said information is ordered by a court or subpoenaed;

(2) Written permission from the subscriber must not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to clause (t)(1); and

(3) For purposes of this provision, a "cable communications channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the communications system.

(u) *Complaint Resolution Procedure.* See Section 3.

(v) *Receipt of Complaints.* See Section 3. Also, Grantee shall immediately provide a consumer complaint telephone number at the City to subscribers that asks for a consumer complaint number.

(w) *Franchise Termination.* The City has the right to terminate and cancel the franchise and the rights and privileges of the franchise if the Grantee substantially violates a provision of the franchise ordinance or agreement, attempts to evade the provisions of the franchise ordinance or agreement, or practices fraud or deceit upon the City. The City shall provide the Grantee with a written notice of the cause for termination and its intention to terminate the Franchise and shall allow the Grantee a minimum of thirty (30) days after service of the notice in which to correct the violation. The Grantee must be provided with an opportunity to be heard at a public hearing before the governing body of the City before the termination of the franchise.

(x) *Abandonment.* No person operating a cable communications system, notwithstanding any provision in a franchise, may abandon a cable communications system or a portion of it without having given three (3) months prior written notice to the franchising authority. No person operating a cable communications system may abandon a cable communications system or a portion of it without compensating the City for damages resulting to it from the abandonment.

(y) *Removal of Facilities.* Upon termination or forfeiture of the Franchise, unless otherwise required by applicable law, the Grantee shall remove its cable, wires, and appliances from the streets, alleys, and other public places within the franchise area if the City so requests. In the event the Grantee fails to remove its cable, wires, and appliances from the streets, alleys, and other public places within the franchise area, the Grantee will be subject to the procedures of applicable local law.

(z) *Access Channels.* The Grantee shall provide nine (9) channels to be used for Public, Educational or Government programming.

(1) Grantee shall provide video-on-demand ("VOD") PEG access with (1) up to 10 hours of standard definition programming capacity, or (2) up to 2 hours of high definition programming capacity and 5 hours of standard definition programming capacity. The City or its designated PEG Access Programmer shall have sole discretion as to the selection of VOD content. The City or the designated PEG Access Programmer shall be responsible for uploading PEG content to the VOD FTP server pursuant to the procedures required by Franchisee's VOD system and in the required format, and shall be responsible for entering all necessary information for populating the VOD menu system.

Grantee shall determine the placement of PEG VOD programming within the VOD menu system, typically under a "Local" menu with other local VOD content. The City will have its own VOD folder under the service menu. Grantee shall use reasonable efforts to promote the PEG VOD, which could include bill messages or inserts, and/or email and social media marketing.

Twenty-four months after the City commences utilizing PEG VOD capacity, upon the City's request Franchisee will review the available PEG VOD viewership statistics for the prior six months with the City. If for the prior six months the City's PEG VOD programs attain an average viewership of 1000 views per month, the City may request (1) an additional 10 hours of standard definition PEG VOD programming, or (2) an additional 2 hours of high definition PEG VOD programming capacity (a total of 4 hours of HD programming) and an additional 5 hours of standard definition PEG VOD programming capacity (a total of 10 hours of SD programming). "Views" means a user watched at least half of the available program.

(2) a. Upon 90 days' notice, Grantee will carry one of the existing standard definition (SD) PEG channels in high definition (HD) format on the cable system such that the City will have 9 PEG Channels, 8 SD and 1 HD PEG channels. The City represents that it has or will have available by that date sufficient local, non-character generated programming in HD format so as to provide content of value to viewers and not have a blank channel. Any time after twelve months from the date of this Agreement, Grantee upon request will carry an additional PEG channel in HD in the same manner as the first HD channel, such that the City will continue to have 9 PEG Channels; 7 carried in SD and 2 carried in HD. Any time after thirty-six months from the date of this Agreement, Grantee upon request will carry one additional PEG channel in HD in the same manner as the first HD channel, such that the City will continue to have 9 PEG Channels; 6 carried in SD and 3 carried in HD. Grantee may choose to simulcast all of the SD PEG Channels in HD.

b. Grantee will deliver the high definition signal to subscribers so that it is viewable without degradation, provided that it is not required to deliver an HD PEG Channel at a resolution higher than the highest resolution used in connection with the delivery of local broadcast signals to the public. Grantee may implement HD carriage of the PEG channel 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.

c. The HD PEG channel will be assigned a number near the other high definition local broadcast stations if such channel positions are not already taken, or if that is not possible, near high definition news/public affairs programming channels if such channel positions are not already taken, or if not possible, as reasonably close as available channel numbering will allow.

d. City 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 channels at that receiver, without additional charges or equipment. By agreeing to make PEG available in HD format, Grantee is not agreeing it may be required to provide free HD equipment to customers including complimentary municipal and educational accounts and universal service accounts, nor modify its equipment or pricing policies in any manner. City acknowledges that not every customer may be able to view HD PEG programming (for example, because they don't have an

HDTV in their home or have chosen not to take an HD capable receiving device from Grantee or other equipment provider) or on every TV in the home.

e. Grantee will provide a bill message announcing the launch of each HD PEG channel; however City acknowledges that not all customers may receive the bill message notice in advance of the channel launch in the interests of launching the channel sooner.

f. Grantee will make available to the City the ability to place PEG channel programming information on the interactive channel guide by putting the City in contact with the electronic program[m]ing guide vendor ("EPG provider") that provides the guide service. Grantee will be responsible for providing the designations and instructions necessary to ensure the channels will appear on the programming guide throughout the City and any necessary headend costs associated therewith. The City shall be responsible for providing programming information to the EPG provider. Grantee shall pay any costs the EPG provider charges to programmers who participate in its service.

g. Grantee will continue to provide, at no cost to the City, air time on non-PEG channels during periods in which ample unsold/unused air time on such channels exists, in a manner consistent with past informal practice, for City public service announcements (PSAs). The City will provide a 30-second PSA prior to the start of each month on a mutually agreed-upon schedule.

h. In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the Access Channels to the Grantee's headend, Grantee shall, at its own expense and free of charge to the City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Access Channels in accordance with the requirements of the Franchise.

i. Grantee shall provide, at no cost to the City, a technically reliable upstream and downstream path for transmission of certain public Access Channels, which will in no way degrade the technical quality of the public Access Channels, from the Minneapolis Telecommunications Network, 1620 Central Avenue NE, Suite 175, Minneapolis, MN 55413.

(3) For purposes of this Franchise, the term channel shall be as commonly understood and is not any specific bandwidth amount.

(4) Neither the Grantee nor the officers, directors, or employees of the Grantee is liable for any penalties or damages arising from programming content not originating from or produced by the Grantee and shown on any public access channel, education access channel, government access channel, leased access channel, or regional channel.

(5) The franchisee shall provide to each of its subscribers who receive Cable Service offered on the system, reception on at least one specially designated access channel.

(aa) PEG Support.

(1) The PEG fee, payable quarterly, shall be:

a. \$0.50/subscriber/month from January 2008 to the year end 2011, provided however that if Grantee's cable TV penetration meets or exceeds forty-five (45) percent of the serviceable dwelling units passed by the cable communications system during this time period the PEG fee shall immediately increase to \$1.00/subscriber/month;

b. \$1.00/subscriber/month from January 2012 to year end 2015~~4~~; and

c. ~~\$1.10/subscriber/month from January 2016 until the Franchise renews, provided however that if Grantee's cable service penetration meets or exceeds fifty (50) percent of serviceable dwelling units passed by the cable communications system during this time period the PEG fee shall immediately increase to \$1.25/subscriber/month.~~ \$1.50/subscriber/month from January 2015 until the franchise renews. Starting with the 2016 calendar year, the City may elect to increase this fee based on the Consumer Price Index. Any such election must be made in writing to the Franchisee no later than September 1st prior to the year in which the increase shall apply. In no event shall the fee exceed \$1.75.

~~(2) These fees shall be further adjusted annually to reflect changes in the Consumer Price Index commencing on January 1, 2009, with the intent to initially adjust the fees to reflect prices benchmarked at 2007 dollars.~~

~~(3 2)~~ If any laws, rules, regulations or government authorizations would allow a provider of multi-channel video programming or equivalent in the City's Rights-of-Way to provide multi-channel video programming or equivalent under less burdensome regulations or regulatory structure than Grantee is operating under, the obligations of this section shall be modified to reflect such changes. Provided, however, that Grantee agrees not to exercise its rights under this section prior to January 2012.

(bb) *Regional Channel 6.* The VHF Channel 6 is designated for uniform regional channel usage as required in Minnesota Statutes § 238.02, subdivision 31(c), and Minnesota Statutes § 238.43.