

**A CABLE FRANCHISE AGREEMENT
BETWEEN CITY OF DUBUQUE, IOWA
AND MCC IOWA, LLC**

May 2, 2005

CABLE FRANCHISE AGREEMENT
CITY OF DUBUQUE, IOWA

	<u>Page</u>
1. DEFINITIONS.....	2
(a) Cable Ordinance or Ordinance	2
(b) Cable Service	2
(c) Franchise Agreement or Agreement.....	2
(d) Franchise Area	2
(e) Grantee.....	2
(f) Gross Revenues	2
(g) Inflation Index	3
(h) Institutional Network or Network	3
(i) Lateral.....	3
(j) Outage	3
(k) PEG	3
(l) Plant Mile	3
(m) Prior Franchise	3
(n) Subscriber.....	3
(o) User	3
2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS	3
(a) Grant of Authority.....	3
(b) Area Served.....	4
(c) Term	4
(d) Grant Not Exclusive	4
(e) Compliance With Applicable Law.....	4
(f) Franchise Agreement Subject to Exercise of Police Powers	4
(g) Approval and Effective Date	5
(h) Effect of Acceptance:	5
(i) Claims Related to Prior Franchise	5
(j) Waivers.....	5
(k) No Recourse	6
3. TRANSFERS.....	6
4. PROVISION OF CABLE SERVICE	6
(a) Line Extension Requirements	6
(b) Continuity of Service	7
5. SYSTEM FACILITIES, EQUIPMENT AND SERVICES.....	8
(a) System Characteristics	8
(b) System Functionality.....	9
(c) System Upgrade	10
(d) System Infrastructure for Services to Business	10

(e)	Technical Standards	10
(f)	Interconnection	11
(g)	Emergency Alert System	11
(h)	Coordination of Trenching.....	11
(i)	Updating	12
(j)	Senior Discount	12
6.	CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE	13
(a)	Access Channels	13
(b)	Capital Grant for Access Equipment and Facilities	14
(c)	Public Access	14
(d)	Return Feed From Facilities.....	15
(e)	Management of Channels.....	16
(f)	Editorial Control	17
(g)	Cable Service to Certain Facilities	17
(h)	Institutional Network	17
(i)	Costs and Payments Not Franchise Fees.....	30
7.	FRANCHISE FEE.....	30
(a)	Payment to City	30
(b)	Final Payment.....	31
(c)	Supporting Information.....	31
(d)	Late Payments	31
(e)	Audit.....	31
8.	LIABILITIES.....	32
(a)	Indemnification by the Grantee	32
(b)	Indemnification by the City.....	32
(c)	Indemnification Procedures	32
(d)	Respondeat Superior	33
9.	PERFORMANCE GUARANTEES AND REMEDIES.....	33
(a)	Performance Bond.....	33
(b)	Letter of Credit	33
(c)	Rights Cumulative.....	34
(d)	Procedures for Remedyng Violations.....	34
(e)	Security Fund Procedures	36
(f)	Remedies.....	37
(g)	Liquidated Damages.....	37
(h)	Shortening, Revocation, or Termination of Franchise	38
10.	MISCELLANEOUS PROVISIONS.....	39
(a)	Binding Acceptance	39
(b)	Severability	39
(c)	Grantee Bears Its Own Costs	40
(d)	Force Majeure.....	40

(e)	Governing Law.....	40
(f)	Notices.....	40
(g)	Time of the Essence	41
(h)	Captions and References	41
(i)	Entire Agreement.....	42
(j)	Understanding and Consent	42

**CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN CITY OF DUBUQUE, IOWA
AND MCC IOWA, LLC**

THIS CABLE FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between City of Dubuque, Iowa ("City"), a municipal corporation and MCC Iowa, LLC, a Delaware Limited Liability Company ("Mediacom").

WHEREAS, Mediacom has asked the City to renew Mediacom's nonexclusive franchise (the "Prior Franchise") to construct, operate, maintain, update and reconstruct a cable services delivery system in the City; and

WHEREAS, the construction, installation, maintenance and operation of such a system involves the occupation of and placement of private commercial facilities in the Public Rights-of-Way within the City; and

WHEREAS, the City has reviewed Mediacom's performance under the Prior Franchise and the quality of service during the Prior Franchise term, has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Mediacom, and has determined whether Mediacom's plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the City has relied on Mediacom's representations and has considered the information that Mediacom has presented to it; and

WHEREAS, based on Mediacom's representations and information, and in response to its request for renewal, the Council has determined that, subject to the provisions of the Cable Ordinance, and the terms and conditions set forth herein, the grant of a new nonexclusive franchise to Mediacom, to supersede the Prior Franchise, on the terms and conditions herein and subject to applicable law, is consistent with the public interest;

NOW, THEREFORE, in consideration of the City's grant of a new franchise to Mediacom; Mediacom's promise to provide Cable Service to residents of the City pursuant to and consistent with the Cable Ordinance, its Franchise, and the terms and conditions set forth herein; and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS.

Except as otherwise provided herein, the definitions and word usage set forth in the Cable Ordinance are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

(a) *Cable Ordinance or Ordinance:* The City of Dubuque Cable Right-of-Way Ordinance, as it may be amended from time to time.

(b) *Cable Service:* (1) the one way transmission to subscribers of (i) video programming, or (ii) 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.

(c) *Franchise Agreement or Agreement:* This contract and any amendments, exhibits or appendices hereto.

(d) *Franchise Area:* The entire present territorial limits of the City and any area annexed thereto during the term of the Franchise.

(e) *Grantee:* MCC Iowa, LLC, a Delaware Limited Liability Company.

(f) *Gross Revenues:* Any and all cash, credits, property or other consideration of any kind or nature derived from the operation of the Grantee's Cable System by the Grantee, its Affiliates, or any other entity that is a cable operator of the System to provide Cable Services, except where such revenues must be excluded pursuant to federal or state law. This definition shall be construed so as to include all gross revenues to the maximum extent permitted by federal and state law, except to the extent specifically excluded in Section 1(f)(2), and encompasses revenues that may develop in the future, whether or not anticipated. If a statutory change in federal law allows the City to receive greater franchise fees than under federal law as of the Effective Date, that change shall automatically be reflected in the franchise fees due under this Agreement, beginning as of the effective date of the change in federal law; provided that the City imposes the same fee requirement upon any other similarly situated multichannel video provider over which the City has jurisdiction to impose such fees.

(1) Gross Revenues include, by way of illustration and not limitation, fees for any cable service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, launch fees, marketing support, or other payments or consideration received from programmers for carriage of programming on the System; revenues from rentals or sales of Converters or other equipment; studio rental, production equipment, and personnel fees; advertising revenues (including any commissions received by a third party); barter; revenues from program guides; and revenues from home shopping and bank-at-home channels.

(2) Gross Revenues shall not include any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the state, City, or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. A Franchise fee is not such a tax, and franchise fee expenses may not be deducted in determining the amount of the fee due to the City.

(g) *Inflation Index:* CPI-U All Urban Consumers U.S. City Average All Items.

(h) *Institutional Network or Network:* This term shall have the meaning given to it in Section 6(h)(1)(E) herein.

(i) *Lateral:* The segment constructed from the I-Net fiber backbone to the designated Demarcation Point at an I-Net site.

(j) *Outage:* This term shall have the meaning given to it in Section 6(h)(2)(l) herein.

(k) *PEG:* Public, educational, and governmental.

(l) *Plant Mile:* The length in miles of strand-bearing cable or underground cable as measured on the street or easement from pole to pole or pedestal to pedestal.

(m) *Prior Franchise:* Cable Services Delivery Franchise, Appendix B of the Code of Ordinances of the City of Dubuque Iowa, Ordinance No. 42-81 (passed July 29, 1981).

(n) *Subscriber:* The City or any Person who is lawfully receiving, for any purpose or reason, any Cable Service via a Cable System, whether or not a fee is paid for such service.

(o) *User:* A person or organization using a channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

(a) *Grant of Authority:* Upon passage by the Council of an ordinance granting a franchise to the Grantee, the Grantee will be granted a franchise subject to the terms and conditions of this Franchise Agreement, and subject to the Cable Ordinance and all other applicable law. This Franchise shall grant authority for the Grantee to use the City's Public Rights-of-Way for the provision of Cable Service. Other services may be provided pursuant to Section 6(h) herein. No privilege or power of eminent domain is bestowed by this grant; nor by this Agreement. This Agreement does not confer any rights other than as expressly provided herein. It neither authorizes the Grantee to use the Public Rights-of-Way for purposes of providing any service other than Cable Service, nor prohibits the Grantee from doing so. The franchise will be for the period

specified in Section 2(c) below, during which time the Grantee will receive the right and obligation to construct, reconstruct, operate and maintain a cable television system within the public rights-of-way in the City for the sole purpose of providing cable service. If for any reason whatsoever the Council does not pass such an ordinance, this Franchise Agreement will be of no further force and effect.

(b) *Area Served.* The Franchise is for the Franchise Area, as that term is defined herein.

(2) The Grantee shall offer service to all areas located within the City limits as they existed on the Effective Date of this Agreement. It must extend service to persons in the City, including residents located in areas which may be annexed in the future, in accordance with the provisions of this Agreement, unless this requirement is waived in writing by the City.

(c) *Term:* The Franchise and this Franchise Agreement shall extend through June 30, 2020, unless the Franchise is earlier revoked or its term shortened as provided herein or in the Cable Ordinance.

(d) *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive, and the City reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time, with or without a franchise, subject to applicable state law, as such law may be subsequently amended from time to time.

(e) *Compliance With Applicable Law:* The Grantee shall comply with the Cable Ordinance and all other applicable law. The Grantee accepts and agrees to all of the provisions of the Cable Ordinance, and the obligations imposed upon it thereby, to the same degree and extent as if each and every such provision were repeated herein, and irrespective of whether any such provisions be so repeated.

(f) *Franchise Agreement Subject to Exercise of Police Powers:* All rights and privileges granted herein are subject to the police powers of the City and its rights under applicable laws and regulations to exercise its governmental powers to their full extent and to regulate the Grantee and the construction, operation and maintenance of the Grantee's Cable System, including, but not limited to, the right to adopt, amend, and enforce ordinances and regulations as the City shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing right-of-way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions, except to the extent that an exercise of such powers would impair the obligations of this Agreement as prohibited by Article I, Section 10, clause 1 of the U.S. Constitution.

(g) *Approval and Effective Date:* This Franchise Agreement shall become effective upon publication of the ordinance approving this Franchise Agreement (the "Effective Date").

(h) *Effect of Acceptance:*

By accepting the Franchise and executing this Franchise Agreement, the Grantee:

(1) accepts and agrees to comply with each provision of the Cable Ordinance and this Agreement, and all applicable federal, state, and local laws and regulations;

(2) acknowledges and accepts the City's legal right to grant the Franchise, to enter this Franchise Agreement, and to enact and enforce ordinances and regulations related to the Franchise;

(3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary, or allege in any claim or proceeding by the Grantee against the City that any provision, condition or term of the Franchise, the Ordinance or this Franchise Agreement at the time of the acceptance of the Franchise was unlawful, unreasonable or arbitrary, or that at the time of the acceptance of the Franchise any such provision, condition or term was void or that the City had no power or authority to make or enforce any such provision, condition or term; and

(4) agrees that it will not oppose intervention by the City in any proceeding affecting the Grantee's Cable System.

(i) *Claims Related to Prior Franchise:* As of the effective date of the Franchise, the Prior Franchise shall be of no further force and effect, and as of that date, the Grantee surrenders any rights it had thereunder. The Grantee shall remain liable for payments of all franchise fees owed under the Prior Franchise, and the grant of the Franchise shall have no effect on the Grantee's duty under the Prior Franchise to indemnify or insure the City against acts and omissions occurring during the period that the Prior Franchise was in effect, including losses or damages resulting from any failure to construct, install or maintain its cable system properly.

(j) *Waivers*

(1) On petition by the Grantee, the City may in its discretion waive any provision of this Agreement, if such waiver is in the public interest.

(2) The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City, nor to excuse the Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

(3) Waiver of a breach of this Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by the City hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

(k) *No Recourse:* Without limiting such immunities as the City or other Persons may have under applicable law, a Grantee will have no monetary recourse against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of (i) the construction, operation or repair of its Cable System, including in cases where the act or omission giving rise to the same was required under Applicable Law or directed by the City; or (ii) the acts or omissions of the City or any other entity using the Public Rights-of-Way or other property under the City's control, except acts and omissions of the City that involve gross negligence or intentional misconduct by the City.

3. TRANSFERS

The Grantee shall comply with all requirements of the Ordinance and applicable law regarding transfers.

4. PROVISION OF CABLE SERVICE

(a) *Line Extension Requirements*

(1) Existing boundaries. Within the City's boundaries as they existed on the Effective Date, the Grantee shall extend its Cable System to provide Cable Service (A) to any dwelling unit or (B) to any school or facility owned or leased by the City, upon request, without charging more than the standard installation charges. The Grantee shall extend its Cable System within such existing boundaries to provide Cable Service upon request to any business requiring a standard installation. In the event that to provide Cable Service to any business would require other than a standard business installation, as defined herein, beyond the public rights-of-way (for example, due to the need to cross a large parking lot), the Grantee shall provide each such installation to each standard point of demarcation outside the building at the standard installation charge for each connected demarcation point if the owner of such business grants legal access and provides a conduit or other necessary physical pathway for Grantee's facilities (for example, by providing conduit space enabling the Grantee to cross a large parking lot without extensive trenching).

(2) For purposes of subsection 4(a)(1), a "Standard Business Installation" shall mean a service drop of no more than one hundred twenty-five (125) feet, with no boring longer than required to pass underneath driveways a maximum of 25 feet wide or sidewalks a maximum of five feet wide, that does not require disruption

of pavement or similar surfaces, providing the standard signal strength for residences, using standard RG-6 residential drop cable.

(3) New areas. In any area annexed by the City after the Effective Date of this Agreement:

- (A) From the date of annexation until three years after that date, the Grantee shall extend its Cable System as necessary to provide Cable Service to every school and government facility and every residential and non-residential subscriber where the average potential subscriber density is at least thirty (30) potential subscribers per linear mile of distribution network, or where (for residential dwelling units) the dwelling unit is within two hundred (200) feet of any existing portion of the Cable System, unless the Grantee demonstrates to the City's satisfaction that extraordinary circumstances, including but not limited to the existence of a wireline competitor in such annexed area that would, subsequent to the annexation, offer a substantially equivalent level of service (including but not limited to PEG access and emergency override capability provided by Grantee), justify a complete, partial, temporary, and/or conditional waiver of this requirement, which waiver shall not unreasonably be withheld or delayed.
- (B) Beginning three years after the date of annexation, the Grantee shall be subject to the same standard as applied within existing boundaries pursuant to Section 4(a)(1).
- (C) Nothing in this Section 4(a) shall be construed to prevent the Grantee from extending service to all units in an annexed area at an earlier date.

(b) Continuity of Service

(1) The Grantee shall ensure that all Subscribers receive continuous uninterrupted service. At the City's request, the Grantee shall operate its System for a temporary period (the "Transition Period") following the termination, sale, or Transfer of its Franchise as necessary to maintain service to Subscribers, and shall cooperate with the City to assure an orderly transition from it to another Grantee. The Transition Period shall be no longer than the reasonable period required to ensure that Cable Service will be available to Subscribers, and shall not be longer than thirty-six (36) months, unless extended by the City for good cause. During the Transition Period, the Grantee will continue to be obligated to comply with the terms and conditions of this Agreement and applicable laws and regulations.

(2) If the Grantee abandons its System during the Franchise term, or fails to operate its System in accordance with the terms of this Agreement during any Transition Period, the City, at its option, may operate the System, designate another entity to operate the System temporarily until the Grantee restores service under conditions acceptable to the City or until the Franchise is revoked and a new Grantee selected by the City is providing service, or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the Cable System.

(3) The Grantee shall be deemed to have abandoned its system if the Grantee fails to provide Cable Service in accordance with its Franchise over any portion of the Franchise Area for ninety-six (96) consecutive hours, unless the City authorizes a longer interruption of service or the failure is due to *force majeure* as characterized herein, or the Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area.

5. **SYSTEM FACILITIES, EQUIPMENT AND SERVICES**

(a) *System Characteristics:* The Grantee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

(1) *Industry-accepted Equipment.* The System shall use equipment generally used in high-quality, reliable, modern systems of similar design, including but not limited to backup power supplies capable of providing power to the system for not less than three hours according to manufacturer's reasonable specifications, in view of local conditions, in the event of an electrical outage. The obligation to provide such backup power supplies shall apply to the Grantee's headend, each fiber optic node, and any other location(s) within the System necessary to maintain service to Subscribers who have power for not less than three hours in the event of an electrical outage affecting the System. In addition, the System's electronics shall be capable of passing through the signals received at the headend without substantial alteration or deterioration (thus, for example, the System shall include components so that a signal received at the headend in color may be received by a Subscriber in color and a stereo signal in stereo). The Grantee shall comply with all applicable laws and regulations concerning System compatibility with Subscribers' television receivers and/or recording devices. Nothing herein shall prevent Grantee from converting digital signals other than high-definition signals for transmission to subscribers in an analog format. The City may require Grantee to add equipment and facilities to its System as necessary to comply with this paragraph, and may establish reasonable deadlines for completion of that work.

(2) The Grantee shall comply with all FCC regulations regarding scrambling or other encryption of signals.

(3) No Deterioration to Access Signals. The System shall be so constructed and operated that there is no significant deterioration in the quality of PEG access signals or leased access signals, either upstream or downstream, as compared with any other channel on the System. Deterioration refers to any signal problem, including but not limited to ghost images and other interference and distortions.

(4) Consumer Equipment For Lease or Sale. Subject to applicable law or regulation, as part of the System, the Grantee shall offer every Subscriber the opportunity to use equipment that allow Subscribers to view a program on one channel while recording a program on another channel.

(5) Parental Control. The Grantee shall ensure that means are available to enable Subscribers to completely block out audio and video on any undesired channels on the System.

(6) Program Security. The System shall include equipment so that any pay-per-view programming can only be activated by the positive action of a subscriber using, for example, a private identification number or other individual selection procedure.

(7) Service to Persons with Disabilities. The System shall transmit closed captions for all programming that includes a closed caption signal. For hearing impaired Subscribers, the Grantee shall provide information concerning the cost and availability of equipment to facilitate the reception of services for the hearing impaired. In addition, the Grantee must have means available, and a publicly listed telephone number for such means, that will allow hearing- or speech-impaired persons to contact the Grantee.

(b) System Functionality

(1) The Cable System shall have the following characteristics:

- (A) bandwidth of at least 750 MHz on all active components and at least 1 GHz for all passive components;
- (B) no more than 500 homes on the average, and no more than 700 homes in any case, served from any fiber node, with sufficient fibers to each node so that each 500-home node could readily be converted to a node of 150 or 200 subscribers;
- (C) no more than four active components in a cascade from any node; and

(D) bidirectional activation with a clean return path permitting a current minimum average of approximately 512 Kbps upstream.

(2) The Grantee shall implement status monitoring throughout the Cable System that will continuously monitor key parameters of all set-top and other devices in the Cable System including all hubs and nodes. The status monitoring system shall alert the Grantee when and where a power supply has lost commercial power and is running on back-up power.

(3) The System shall provide two-way capability.

(4) No later than June 30, 2006, the Grantee shall ensure that all broadcast television signals carried on the Cable System are transmitted to the headend over direct fiber connections either from the broadcast origination point, or from an over-the-air reception point located in such a way that the signal is not at any time significantly degraded from its level of quality at the broadcast origination point.

(c) *System Upgrade:* Within twenty-four (24) months after the Effective Date, the Grantee shall complete a system upgrade to a bandwidth of at least 860 MHz ("System Upgrade").

(d) *System Infrastructure for Services to Business*

(1) Within two years after the Effective Date of this Agreement, the Grantee shall install at least six fibers for the Grantee's own use in offering services to businesses, over and above any fibers installed for the I-Net or for the offering of services to residential Subscribers, to the edge of the Dubuque Industrial Center West and the Dubuque Technology Park.

(2) Wherever the Grantee installs fiber in the I-Net pursuant to this Section 6(h)(2), but excluding I-Net Laterals, the Grantee shall also install, at its own expense, at least six fibers for the Grantee's own use in offering services to businesses, over and above any fibers installed for the I-Net or for the offering of services to residential Subscribers.

(3) Within six months (excluding any delay necessitated by weather conditions) after a customer signs an agreement with the Grantee on reasonable commercial terms requiring a direct fiber connection to the customer's premises, the Grantee shall construct any necessary fiber line extension in the public rights-of-way at no additional cost to the customer.

(e) *Technical Standards:* The Cable System shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards.

(f) *Interconnection:* The City may use the I-Net, or facilities supplied by the City, to interconnect with other communications systems, provided that such use of the I-Net is consistent with this Agreement.

(g) *Emergency Alert System*

(1) The Grantee shall install and maintain for use by the City an Emergency Alert System ("EAS") meeting all applicable requirements of federal law.

(2) The Grantee's System shall include the capability for the City to access the EAS using non-location-specific technology, without the assistance of the Grantee, in the event of emergency or for reasonable tests, to override at least the audio on all channels on the Grantee's System, to the extent that such override does not interfere with the federally mandated EAS, applicable state or local plans or with broadcaster preemption of override of individual signals. When negotiating carriage of broadcast signals, the Grantee shall use reasonable commercial efforts to avoid such broadcaster preemption of such messages. Where the Grantee is not able to avoid such preemption, the Grantee shall provide written notice to the City identifying the broadcast signal.

(3) The Grantee shall cooperate with the City in any test of the EAS.

(4) Except to the extent expressly prohibited by law, the City will hold the Grantee, its officers, employees and assigns harmless from any claims arising out of the City's use of the EAS.

(h) *Coordination of Trenching*

(1) Grantee shall provide the City with reasonable advance notice of any plans to install underground facilities in the Grantee's trenches in the City's public rights-of-way, so that the City may at its discretion install conduit and/or fiber of its own at the same time. The City shall provide Grantee with reasonable advance notice of any planned street openings in the City's public rights-of-way, so that Grantee may at its discretion install facilities of its own at the same time.

(2) A party installing conduit and/or fiber pursuant to section 5(h)(1) shall not be required to pay a share of the trenching cost. However, if the City either (A) establishes a communications utility or its equivalent, or (B) competes directly or indirectly, including in any joint venture or other cooperative agreement, in providing third parties with services also provided by Mediacom, then the City shall pay half of Mediacom's trenching costs where the City has installed conduit and/or fiber in Mediacom's trenches pursuant to section 5(h)(1) at any time from the Effective Date forward and shall continue to pay for future installations throughout the term of this Franchise Agreement, and Mediacom shall pay half of the City's trenching costs where Mediacom has installed conduit and/or fiber in the City's trenches pursuant to section 5(h)(1) at any time from the Effective Date forward and shall continue to pay for future installations throughout the term of this Franchise Agreement. The costs paid for such

trenching shall be \$0.94 per foot for simple trenching, \$3.15 per foot for pneumatic bore, and \$8.00 for directional bore, each adjusted according to the Inflation Index.

(3) Grantee and the City shall work together to develop routine procedures by which this coordination can be accomplished.

(i) *Updating*

(1) No later than October first of each year beginning with the first year and ending after the twelfth year of the franchise term, Grantee shall provide \$300,000 for the purpose of updating the Cable System. Such monies shall not be used for operational, repair, maintenance, replacement, or line extension purposes, but shall be used to improve the technology and capabilities of the existing System.

(2) The City and Grantee shall jointly determine how to most appropriately expend such monies for updating the Cable System. Updating monies shall be expended as agreed by the City and Grantee; provided, however, that this Agreement shall constitute the City's approval for the Grantee to expend all or part of the first four years' installments of the updating monies as specified in section 5(i)(1) to the extent necessary to cover the actual reasonable costs of the System Upgrade carried out pursuant to section 5(c).

(3) Updating monies may be expended as such become available, may be advanced on account for expenditure, or may be invested for later expenditure along with all interest earned thereon, as may be agreed by the City and Grantee. An agreement on any of these three uses shall satisfy the requirement for agreement stated in Section 5(i)(2).

(4) At the beginning of the fifth year of the Term, and at the beginning of each subsequent year, after reviewing Grantee's financial reports, the City may, at its sole discretion, require the Grantee to secure all or any part of the updating fund for the following year by instrument(s) that may be drawn on by the City for the purposes specified in section 5(i)(1) pursuant to the procedures specified in section 9(e) and consistent with the conditions specified in section 5(i)(2). If the City exercises this option, the Grantee shall determine whether such instrument(s) shall be (i) an escrow, (ii) an irrevocable letter of credit, or (iii) any combination thereof.

(5) If any updating monies remain unexpended as of fifteen years after the Effective Date of this agreement, such funds shall be distributed equally among the then basic Subscribers on their statements for the following month.

(j) *Senior Discount:* The Grantee shall offer eligible senior citizen Subscribers a discount on the rates for Grantee's Family Cable level of Service (a purchase of both the basic service and the first cable programming services tier as those terms are defined in the Cable Act on the Effective Date) of no less than ten percent (10%) per month. Senior citizen Subscribers shall be eligible for this discount if they provide documentation of age (65 or older), residency at the service address, and that at least one utility is billed in the senior citizen's name at the service address.

6. CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

(a) Access Channels

(1) The Grantee shall make available to all Subscribers on the System at least five (5) video Channels for public, educational and governmental use, which Channels shall be in addition to any capacity provided on the Institutional Network pursuant to Section 6(h).

(2) The Grantee shall provide any Access Channels on the lowest level of service throughout the life of the Franchise, or if there is no basic tier (e.g., if a basic tier is not required by federal law and federal law does not prohibit the City from requiring a basic tier and the City imposes the same requirements on all Cable Service providers in the City over which the City has jurisdiction to do so), the Grantee shall provide the Access Channels as part of the Cable Service provided to any Subscriber, at no additional charge, and so that the channels are viewable by the Subscriber without the need for additional equipment. If Channels are selected through a menu system, the Access Channels shall be displayed as prominently as commercial programming choices offered by Grantee.

(3) At such time as the City authorizes conversion of an analog PEG Channel to digital format on the System, the City may request and the Grantee shall within six months migrate such PEG Channel to digital format, and Grantee shall install such headend equipment as is necessary to cablecast in high definition format PEG programming produced in such format.

(4) Access channel assignments shall be the same throughout the System. Access channel assignments shall not be changed unless there is good cause and the City consents to the change. Such consent to a channel assignment change shall not be unreasonably withheld. Any such reassignment must be to a Channel of technical quality at least equivalent to that of other Channels on the System. In the event of such a reassignment, Grantee shall pay the costs of all equipment reasonably required due to the reassignment, and shall provide notices to educate viewers as to the reassignment. In the event Grantee makes any change in the Cable System and related equipment, or facilities or in its signal delivery technology, which would have a material adverse impact on the transmission or signal quality of Access programming, the Grantee shall at its own expense take all necessary steps to ensure that, at a minimum, such quality is maintained at no less than the previous level.

(5) Upon the conversion of the entire Cable System to digital transmission or December 31, 2006, whichever occurs first, the Grantee shall provide the City with PEG capacity for video programming that may be accessed by Subscribers through use of standard digital equipment compatible with the Grantee's Cable System using the Grantee's "on demand" capabilities. The Grantee shall provide storage capacity for up to twenty hours of on-demand PEG programming at any given time. The

City and the Grantee may by mutual agreement arrange for additional capacity on terms to be determined at the time of agreement. If the City wishes to store additional programming on its own servers or facilities, the Grantee shall cooperate with the City in making such additional programming available through the same on-demand methods. Within thirty days after providing such capability, the Grantee shall provide the City with an encoder that may be used to digitize PEG programming for use in this on-demand arrangement.

(6) If Grantee makes changes to its Cable System that require additional equipment to deliver the PEG programming to Subscribers, Grantee shall make such equipment available.

(7) The City agrees that its designated Educational and Governmental access channels and capacity are not to be used for any for-profit, commercial purposes by the City or third parties. Use of such channels or capacity is not "for profit" or "commercial" solely because an access programmer or access channel manager has more revenues than expenses, or because the activity in which it is engaged is provided on a for-profit basis by private entities in other communities or the City. Nothing prevents the City from authorizing charges to users or viewers to pay for services such as fees for video class instruction or charges to recover the cost of special use equipment, or as they may be required to charge under applicable law.

(b) Capital Grant for Access Equipment and Facilities

(1) In addition to the franchise fee, the Grantee shall deposit one and three-quarter percent (1.75%) of its Gross Revenues annually, paid at the same time and in the same manner as the franchise fee, in an interest-bearing account upon which the City may draw for capital support for PEG and I-Net use, in its sole discretion (except that the City shall not use more than half of the PEG Capital Support Fund for I-Net support, as distinct from support for PEG Access video programming), at any time while the Franchise remains in effect (the "PEG Capital Support Fund"). Any unused funds shall be returned to the Grantee at the end of the franchise term.

(2) For purposes of this Section 6(b), "Gross Revenues" shall be construed to include all revenues from types of service which on January 1, 2005, were considered "cable service" as that term was used on that date in 47 U.S.C. § 522(6), whether or not such types of service are determined or held to be "cable service" at any later date.

(c) Public Access

(1) Grantee shall have a continuing obligation, throughout the life of this franchise, to provide studio facilities, production assistance, editing, scheduling and playback, training, outreach, management, and administrative support for users of the public access channels at the level provided as of January 1, 2005. Equipment for the public access studio shall be provided using the PEG Capital Support Fund as determined by the City pursuant to section 6(b). The ability to produce and show

programming on the public access channels shall be available to any person who resides within the City limits, and any institution, organization or agency with either a principal place of business in the City, or a principal regular meeting place within the City limits, on a first-come, first-served basis, and shall not require Applicant to exercise editorial control over such use, pursuant to 47 U.S.C. § 531(e).

(2) In particular, and without limitation, Grantee shall ensure that production facilities and support are available at least fifty-seven (57) hours per week to provide to interested members of the public training and assistance in the use of PEG access production equipment and assistance in the production of PEG programming. In weeks including one or more legal holidays such fifty-seven (57) hour requirement shall be reduced accordingly. The regular operating hours of the PEG access facilities shall include some evening hours, and shall include some Saturday hours by appointment. The Grantee shall maintain all PEG access equipment, provide for the check-in and check-out of PEG access equipment, and schedule the use of the Grantee's facilities by persons producing PEG programs.

(d) Return Feed From Facilities

(1) The Grantee shall connect the following access origination sites by dedicated fiber-optic upstream feeds to the headend, including both the fiber itself and all terminal equipment necessary for transmission of the signals for each access channel to be originated there in accordance with the schedule for connection of I-Net sites attached as ExhibitB, except for the public access studio, which shall be connected during the first year of I-Net construction).

- (A) Public access studio
- (B) Public school central administrative office at The Forum, Chaney Road
- (C) Master control room at Loras College
- (D) City Hall Annex

(2) The dedicated connections required by Section 6(d)(1) shall be designed and built to include all equipment, including but not limited to laser transmitters, receivers, modulators, and processors, drops and wiring, so that each such center can send signals to the headend on at least two channels initially and up to two additional channels if additional downstream channels are activated for PEG use; and so that the facilities can each remotely and without assistance from the Grantee or access to its headend (i) receive signals from distant locations; (ii) route signals originated at that center or at other locations onto any of the access channels on the regular subscriber network; and (iii) otherwise control the signals to allow for smooth breaks, transitions, insertion of station IDs and other material. Grantee shall bear the cost of acquiring and maintaining all fiber and equipment necessary to meet this requirement, except that either the City or the owners of the sites shall be responsible for acquiring and maintaining the transmission equipment at the studio (as distinct from

the headend) end of the connections for the locations listed in §§ 6(d)(1)(B), (C), and (D) for the educational and governmental channels.

(3) Grantee shall ensure that programming received via the upstream feeds is retransmitted as sent by the PEG programmer, without changing the attributes of the signal in such a way as to effectively degrade the output. The facilities and equipment provided would not be adequate if there would be more deterioration on channels set aside for public, educational and government use on the I-Net or subscriber network than on other channels on the cable system. Deterioration refers to any signal problem reflected in FCC technical standards, including, but not limited to, ghost images and other interference, distortions, degradation of chroma and luminance, and imperfections.

(4) The Grantee shall continue to maintain and operate the existing upstream connections until the I-Net is fully functional as specified in § 6(h)(13) and as such will allow transmission of PEG programming from the Carnegie-Stout Public Library and the Dubuque County Courthouse. Grantee shall not be required to provide the transmission equipment for the Carnegie-Stout Public Library and the Dubuque County Courthouse once the City migrates the upstream feeds from such locations to the I-Net.

(e) *Management of Channels*

(1) The five access channels shall be managed as follows:

- (A) Two public access: by Grantee
- (B) One governmental access: by the City
- (C) Two educational access: one by the Dubuque Community School District; one jointly by the other educational institutions in the City

(2) The City may at any time designate one (1) or more entities, including a non-profit access management corporation, to perform any or all of the following functions:

- (A) to manage any Public, Educational, or Government Access Channel;
- (B) to establish policies for the use of access channels and facilities; and/or
- (C) to manage any necessary scheduling or allocation of capacity on the Institutional Network.

(3) In the event that the City designates an entity other than the Grantee to manage the Public Access channels, the City will provide all Public Access

programming to Grantee for distribution on Grantee's system simultaneously with distribution of such programming by any other provider authorized to distribute such programming.

(f) *Editorial Control:* Except as expressly permitted by federal law, the Grantee shall not exercise any editorial control over the content of programming on the designated Public, Educational and Governmental Access Channels (except for such programming as the Grantee may produce and cablecast on such Channels).

(g) *Cable Service to Certain Facilities*

(1) Upon request of the City, Grantee shall without charge provide one activated outlet for Cable Service at each school, and each facility owned or leased by the City, as shall be designated by the City from time to time. For annexed areas, such service shall be provided in accordance with the line extension requirements set forth in Section 4(a)(3) above.

(2) The institution being served may further distribute within the school or facility any Cable Service it lawfully receives, consistent with the mission of the institution, at its own expense.

(3) The Grantee shall provide Basic Service free of charge to those facilities specified in Section 6(g)(1) herein. At its sole discretion, the Grantee may also provide higher levels of service to such facilities free of charge.

(4) The Grantee shall also provide a converter, decoder, or similar equipment if necessary for user equipment (such as television sets) to receive Basic Service at each such outlet, with all capabilities or options afforded at a given time by the System. Grantee shall ensure that all signals are provided at such outlets with sufficient strength that they can be further amplified to distribute them throughout the site.

(5) The Grantee shall install a maximum 200-foot service drop and maintain one connection for Internet access to one computer terminal in each school and library within the Franchise Area. Any additional costs will be borne by the requesting school or library on a time-and-material basis. All schools and libraries receiving such service will enter into the Grantee's standard service agreement. In the event that such institutions wish to create an internal network, the City agrees that such institutions will contact the Grantee for a proposal to provide such networking, but the institutions shall be under no obligation to accept such a proposal.

(h) *Institutional Network*

(1) **Definitions.** For purposes of this Section 6(h):

(A) "Authorized Users" means those parties identified in section 6(h)(9)(A).

- (B) “Dark Fiber” means fiber optic strands that are capable of carrying voice, video, and data transmissions but that have not yet been activated.
- (C) “I-Net Coordinator” means a Person designated by the City for the purposes specified in this section 6(h).
- (D) “I-Net Service Area” means the area specified in section 6(h)(2)(E).
- (E) “Institutional Network” or “I-Net” means a fiber-optic network related to the Grantee's cable system that is to be designed and constructed by the Grantee and is not generally available to subscribers of the Grantee's cable system.
- (F) “Primary Contact” means those Persons indicated in section 6(h)(9)(B).
- (G) “Work” means whatever is required of the Grantee to perform and complete its duties under this Section. The term does not refer to activities of the Grantee required to perform and complete its duties under other Sections of this Franchise Agreement, including but not limited to construction of subscriber network facilities.

(2) Fiber Construction

- (A) The Grantee will construct the I-Net at the Grantee's expense, linking the public, educational and governmental facilities in the City itemized on Exhibit B, in accordance with the conditions set forth in this Franchise Agreement.
- (B) The I-Net shall be a bidirectional, fully fiber-optic network designed and constructed with single-mode fiber, in a design so that each of the designated service locations can originate and receive fully interactive video, data and voice signals.
- (C) The Grantee shall install I-Net fiber to specified sites as designated and described in Exhibit B. The main ring shall have twelve fibers, with six fibers to sites not on the ring (where Exhibit B indicates which sites are on the ring).
- (D) The Grantee shall collocate I-Net fiber with subscriber network fiber whenever reasonably feasible based on cable industry practices. The I-Net fibers shall be separate from any fibers utilized for the subscriber network, and the City

shall have only such rights in the I-Net fibers as are set forth in Section 6(h)(6).

- (E) I-Net fibers shall be terminated and labeled using industry standard connectors in an area specified in the I-Net design described in § 6(h)(3) within the headend facility (the "I-Net Service Area"). The I-Net Service Area shall have space for four standard nineteen-inch racks for the I-Net Users' use in a secure building, sufficient heating and air conditioning. -48 V DC and 120 V AC power shall be available for the I-Net Service Area, including backup power as specified for the system generally.
- (F) The Grantee shall have personnel available to provide City personnel with access to its I-Net Service Area from 8 a.m. to 6 p.m. each business day, and at all other times shall have personnel available by mobile telephone to provide City with access within ninety (90) minutes of a call from a Primary Contact.
- (G) Single-mode fibers will be built to each I-Net site as designated in Exhibit B. At each I-Net site, at the City's option, either (i) fibers shall be terminated using industry standard connectors at a demarcation point to be agreed upon by the Grantee and the User up to fifteen feet inside the building entry wall and consistent with the Grantee's direction of approach to the building, consistent with the FCC's rules as amended from time to time (the "Demarcation Point"), or (ii) the Grantee shall provide a coil of fiber-optic cable, without termination or connector, of a length reasonably requested by the User to permit the User or the facility owner to bring the connection further inside the building beyond that Demarcation Point in accordance with normal industry practice. Any I-Net fiber starting at the Demarcation Point and extending outward from the building shall be deemed to be on the Grantee's side of the Demarcation Point, and any I-Net fiber starting at the Demarcation Point and extending further inside the building shall be deemed to be on the user's side of the Demarcation Point. The City shall specify the Demarcation Point in writing to the Grantee for each I-Net site listed in Exhibit B at least 90 days prior to the commencement of construction for each such site.
- (H) The fiber-optic plant shall be installed to industry standards. In no case shall fiber losses exceed 0.35 dB/km. at 1310 nm, and 0.25 dB/km. at 1550 nm. Splices shall not exceed 0.1

dB per splice, and connectors shall not exceed 0.75 dB per connector pair. Maximum signal loss for any link shall not exceed the manufacturer's passive cable attenuation specifications, adjusted for cable lengths, splice loss and connector loss. The Grantee shall provide documentation of acceptance testing pursuant to § 6(h)(4).

- (I) Grantee shall maintain the I-Net fiber plant at a high level of reliability and will ensure that such I-Net fiber plant does not have an unreasonable number of outages as compared with other fiber-based institutional networks provided by cable operators pursuant to cable franchises.
 - (i) The fiber I-Net shall be considered as experiencing an "outage" when any Grantee-provided fiber optic network component or Grantee-provided interconnect precludes or substantially impairs the transmission of information on the I-Net or a portion thereof.
 - (ii) "Outage" conditions shall not include (A) scheduled preventive maintenance as long as the City's I-Net Coordinator is notified at least five business days in advance, or (B) *force majeure*.
- (J) Aerial cable for the I-Net may be installed free-standing or overlashed to existing strand. New underground fiber optic cable shall be buried in conduit such as that composed of concrete, PVC pipe, or polyethylene pipe.
- (K) The Grantee shall begin construction of the I-Net within three months after the Effective Date. Grantee shall complete construction of the I-Net plant by the end of eighteen (18) months after the Effective Date. Construction of the sites designated as Core/Ring sites in Exhibit B shall be completed within one year after the Effective Date.
- (L) In addition to the sites specified in Exhibit B, if the City agrees by one year after the Effective Date to provide half the cost of construction to the four additional sites as specified below, and by eighteen months after the Effective Date actually provides half the cost of construction to the Grantee, the Grantee shall in the same way connect those sites to the I-Net within two years after the Effective Date. The four additional sites are:

- (i) Army/Navy Reserve, 10763 Airport Road (type of use: R, fibers: 6)
- (ii) Army Corps of Engineers, Lock and Dam #11 Eagle Point Drive (type of use: R, fibers: 6)
- (iii) National Guard, 195 Radford Road (type of use: R, fibers: 6)
- (iv) U.S. Coast Guard, 60 East First Street (type of use: R, fibers: 6)

(M) All I-Net wiring on the User's side of the Demarcation Point and all I-Net electronics are the sole responsibility and property of the User, provided, however, that the City may use monies from the PEG Capital Support Fund at its discretion for such wiring and electronics. All costs associated with locating or repairing any failure which is reported to the Grantee but which subsequently is determined to have occurred on the User's side of the Demarcation Point shall be paid for by the User, except to the extent that the Grantee's negligence or intentional misconduct caused such failure.

(N) All costs associated with locating or repairing any failure which is determined to have occurred on the Grantee's side of the Demarcation Point shall be the responsibility of the Grantee pursuant to Section 6(h)(8), except to the extent that the User's or the City's negligence or intentional misconduct may adversely affect such equipment and facilities have caused such failure.

(3) **Coordination of Design and Construction of I-Net**

- (A) The Grantee shall perform continuity tests for I-Net segments in phases as construction is completed.
- (B) The Grantee shall submit detailed site plans for design and construction of each I-Net segment consistent with Exhibit B at least forty-five days prior to the anticipated start of construction on that segment. The City shall review and approve such detailed site plans at least ten days before the anticipated start of construction of that segment, and before the Grantee begins actual construction of the segment. Such approval shall not be unreasonably withheld.

- (C) The I-Net design shall include specification of the industry standard connectors to be used and the demarcation points for all I-Net sites.
- (D) The Grantee shall coordinate its design and construction planning with the City so that, in addition to the notice provided to the City pursuant to the system design submission process generally, the City shall have as much notice as reasonably possible so that it can plan for activation and use of the I-Net as the Grantee builds out the I-Net fiber.
- (E) The City shall notify the Grantee in writing prior to the activation of any I-Net segment.

(4) **Acceptance.** Construction standards shall be as specified in the Ordinance. The acceptance procedure for each I-Net site is as follows: ten (10) business days in advance of testing, the Grantee shall inform the I-Net Coordinator of any continuity test. The City shall have the option to be present at the test. The Grantee shall perform the test after terminating the fibers on both ends and will conduct the test from the connector output at both 1310 nm and 1550 nm using an optical time-domain reflectometer (OTDR) from both ends of the fiber (at the user site and at the headend or aggregation site). The Grantee shall submit the continuity test results to the City; the City may require re-testing of the segment if it is not satisfied with the results of the Grantee's tests. The results shall be deemed accepted if the City does not object to such results within ten (10) business days.

(5) **Warranty.** The fiber installed by the Grantee pursuant to this Section shall be warranted against defects in materials and workmanship for 12 months after acceptance. This warranty is in addition to, and does not relieve the Grantee from, its maintenance responsibilities pursuant to Section 6(h)(8).

(6) **Indefeasible Rights of Use**

- (A) The City shall possess the indefeasible right to use fiber optic plant dedicated to the I-Net and any extensions or replacements thereof installed by the Grantee, subject only to such mechanic's or other liens as Grantee may have pursuant to state law (the "Indefeasible Rights of Use"). The Indefeasible Rights of Use shall be coterminous with this Franchise Agreement.
- (B) In order to protect the City's right to continue using the Institutional Network pursuant to this Franchise Agreement, the Grantee shall cooperate with the City in recording its indefeasible right of use interest in the fibers as defined in this Franchise Agreement with the State Department of

Assessments and Taxation, the City Clerk, or such other office as may be appropriate.

(7) Disposition of I-Net. Upon termination of this Franchise Agreement, the City shall have the option to purchase the I-Net from Grantee at a price determined as follows:

- (A) Beginning upon expiration of the fifteen-year Term of the Franchise Agreement, provided such Franchise Agreement is not terminated or revoked prior to that date, the purchase price shall be an amount equal to the net book value of the I-Net as measured by the cost of the I-Net less the accumulated depreciation of the I-Net assets with both cost and accumulated depreciation computed in accordance with Generally Accepted Accounting Principles and consistent with the amounts and methodologies used to report the same to shareholders ("Net Book Value"); or
- (B) If the Franchise Agreement is terminated or revoked in accordance with the terms of this Franchise Agreement and Ordinance prior to the expiration of its Term, the purchase price shall be an equitable amount taking into consideration the value of the I-Net to the City and other Authorized Users, but in no event less than the Net Book Value as of the date of termination or revocation.

(8) Maintenance. The Grantee shall maintain, repair and, as necessary, replace I-Net fiber plant on the Grantee's side of the Demarcation Point in accordance with the following procedures and conditions:

- (A) *Preventive and Routine Maintenance.* The Grantee shall perform routine and preventive maintenance on I-Net plant in the same time and in the same fashion as routine and preventive maintenance are performed for the subscriber network, without charge to the City or other Users. In the course of performing routine and preventive maintenance, the Grantee shall use its best efforts to identify potential trouble conditions warranting repair or replacement of I-Net plant not bundled together with subscriber network plant. The Grantee and the City shall as promptly as practicable report potential trouble conditions to the other party.
- (B) *Outage Categories.* Response and restoration times are determined by the category of service outage as follows:
 - (i) **Critical Outage:** Loss of service to one of the fiber routes feeding a critical facility. A maximum of

twenty-five such critical fiber routes will be designated by the City by written notice to the Grantee after the Effective Date and before completion of the I-Net. The City may subsequently change which fiber routes are designated critical, as long as the total number does not exceed the maximum of twenty-five specified above. Any such change shall be provided by the City to the Grantee in writing.

- (ii) Major Outage: Total loss of service to an I-Net site other than one listed as critical pursuant to Section 6(h)(8)(B)(i).
- (iii) Minor Outage: Loss of service on a single fiber to any I-Net site where any traffic can be placed immediately on another fiber at that site. If it is not possible to reroute traffic in this way immediately, the outage is a Major Outage.
- (iv) Service Interruption: Reduction in signal throughput to the point where the signal on a circuit falls below acceptable standards.

(C) *Response to Outages.* The response time (the point at which the Grantee is engaged in restoration of service) for all Service Outages, whether reported to the Grantee by the User or independently identified by the Grantee, shall be as specified in Section 6(h)(8)(F). Upon identification of a Service Outage, the Grantee shall, within such response time, have qualified personnel on site to investigate the outage, assess the cause and commence necessary repairs. To the extent that necessary repairs resulting in restoration of connectivity on the I-Net can be immediately accomplished, the Grantee shall effect such repairs in connection with its investigation of the cause of the Service Outage. To the extent that repairs cannot be immediately effected, the Grantee shall, within the response time, inform the City I-Net Coordinator of the apparent cause of the Service Outage, the anticipated time for restoration of connectivity.

(D) Restoration of Service.

- (i) The Grantee shall, to the maximum extent practicable, effect restoration of connectivity of any category of service involving I-Net plant that is bundled together with subscriber network plant at the

same time as restoration of co-located subscriber network plant.

- (ii) The Grantee shall effect restoration of connectivity of I-Net plant that is not bundled together with subscriber network plant as promptly as practicable within the estimated restoration times reported to the City pursuant to Section 6(h)(8)(F) and shall use its best efforts to effect such restoration within the service objectives set forth in Section 6(h)(8)(F).
- (iii) In the case of a Service Outage involving more than one category of Service Outage or multiple service outages involving more than one category of Service Outage, the Grantee shall restore connectivity in the order specified in Section 6(h)(8)(B), or such other order of priority as the City reasonably requires. In all cases involving Service Outages resulting from I-Net plant that is bundled together with subscriber network plant, the Grantee shall effect restoration of connectivity of any category of service involving I-Net plant that is bundled together with subscriber network plant at the same time as restoration of co-located subscriber network plant.

(E) *Cost of Maintenance.* The Grantee shall provide maintenance for I-Net fiber plant without any charge to the City or any other Authorized User, except for any maintenance required due to any negligence or intentional misconduct of the City or any other Authorized User.

(F) *Response and Restoration Times.* For response and restoration of service as specified in Sections 6(h)(8)(B)(iv) and 6(h)(8)(D), the Grantee shall respond as soon as practicable, but within the following time frames, commencing from the time the Grantee (i) obtains actual knowledge of the problem or (ii) receives notice of the problem from the I-Net Coordinator (collectively "Notice"). All permanent repairs shall be completed within thirty (30) days after Notice, unless otherwise agreed to by the City.

- (i) Critical Outage: Response on site within two hours after Notice, minimum temporary repair (fully operational connectivity, end to end) completed within four hours after Notice.

(ii) All other (Major Outage, Minor Outage, and Service Interruption): Response within two hours after Notice between 8 a.m. and 6 p.m. on business days and four hours after Notice otherwise; temporary repair completed within eight hours after Notice.

Where, for reasons beyond the Grantee's control, restoration of service or permanent repair cannot be completed in the above time periods even with the exercise of all due diligence (for example, where the Grantee is delayed in obtaining access to poles or conduits or facilities), the Grantee shall complete the restoration of service in the shortest time practicable and permanent repair within thirty (30) days of completion of a temporary repair.

(G) For purposes of this Section 6(h), the term "Maintenance" shall mean any action required to restore physical fiber optic connectivity on the Grantee's side of the Demarcation Point to the performance standards specified in Section 6(h)(2).

(H) If any fiber optic cable in which the City has an Indefeasible Right of Use should be cut or damaged, and the responsible party is identified, then the City shall support the Grantee's claims for damages against the responsible party.

(I) In the event that a Primary Contact or designee requests on-site service from Grantee and Grantee responds on-site and determines that the I-Net is functioning properly on Grantee's side of the demarcation point, such trouble call shall be deemed a "False Trouble Report." After an Authorized User accumulates four False Trouble Reports in one calendar year, Grantee may charge, and the City shall require Authorized User to pay, a False Trouble Report Fee in an amount not to exceed \$50 each for the fifth through eighth False Trouble Report in the same calendar year and an amount not to exceed \$100 each for each the ninth and each additional False Trouble Report in the same calendar year.

(9) **Use**

(A) The parties authorized to use the I-Net ("Authorized Users") shall be, to the extent approved by the City:

(i) those entities for which I-Net sites will be constructed pursuant to Exhibit B;

- (ii) Additional local, state and federal government entities, educational entities (including but not limited to schools and museums), and entities jointly approved by the City and Grantee, that have executed agreements with the City which include commitments for non-commercial use of the I-Net and are subject to the same restrictions as are similar entities pursuant to sections 6(h)(9)(C), 6(h)(9)(D), and 6(h)(9)(E).
- (B) The City shall require all Authorized Users to provide the City and Grantee name and contact information for a "Primary Contact," including 24-hour telephone contact information, and to timely update such information as it changes from time to time. The Primary Contact shall have primary responsibility for providing access to Grantee as necessary for Grantee to assess, repair or perform corrective measures at I-Net locations. Unless otherwise specified by the City from time to time, the Primary Contact for all City I-Net sites shall be the I-Net Coordinator.
- (C) The City shall not use, or permit any Authorized User to use, the I-Net for resale or for commercial purposes. "Commercial" use does not include (by way of example and without limitation) Internet access by Authorized Users, or Internet access by visitors to public libraries.
- (D) Those Authorized Users designated as "Restricted" ("R") or as "Emergency" ("E") in Exhibit B, such as Iowa state sites and colleges, may not use the I-Net on a regular basis for communications that travel over facilities that are not part of the I-Net or of the institution's own internal network, except that use for reception and/or distribution of noncommercial public service content shall not be restricted.
- (E) Those Authorized Users designated as "Emergency" ("E") in Exhibit B, such as hospitals, may use the I-Net only for community emergency purposes, including emergency readiness.
- (F) Prior to permitting any Authorized User to connect to and/or use the I-Net, the City shall obtain a written agreement with such Authorized User that prohibits commercial use of the I-Net or any use inconsistent with this Franchise Agreement. Grantee shall be an intended third-party beneficiary of such agreements. City shall have the primary obligation to enforce such agreements.

- (G) In the event that City learns that an Authorized User's use of the I-Net is in conflict with the restrictions contained in this Franchise Agreement, City shall: (1) promptly provide written notice to Grantee, stating with specificity the identity of the Authorized User and the nonconforming use; (2) promptly serve written demand on Authorized User to cease and desist such use; and (3) if the Authorized User fails to comply with such cease and desist demand, disconnect or disable such Authorized User's access to the I-Net.
- (H) The Grantee shall have no control, responsibility or liability for the signals distributed over the fiber optic components of the I-Net by the City or other Authorized Users or for their benefit.
- (I) The I-Net obligations included in this Agreement do not create any rights in or enforceable by any Authorized Users, or other Persons, other than the City.
- (J) The conditions specified in this Section 6(h)(9), and generally in this Section 6(h), shall not apply to any facilities or equipment other than the dark fiber constructed by the Grantee pursuant to Section 6(h)(2), except to the extent and during the period that such other facilities or equipment are connected to and operating in conjunction with the dark fiber constructed by the Grantee pursuant to Section 6(h)(2).

(10) Security. The Grantee shall not in any way compromise the physical, optical, electronic, or signal transmission security of Authorized User communications transmitted over the I-Net, except as required by law.

(11) Subcontractors

- (A) A subcontractor is an entity which has a direct contract with the Grantee to perform a portion of the Work.
- (B) The Grantee shall not enter into a subcontract with a proposed subcontractor with reference to whom the City has made timely and reasonable objection. The Grantee shall not be required to subcontract with any party to whom the Grantee has objection.

(12) ICN Links

- (A) The Grantee shall continue to maintain and operate all existing links to the Iowa Communications Network ("ICN"), as such links were in operation on January 1, 2005, without

charge to the City, any ICN user or other party, as long as Grantee is not charged for such links by ICN.

(B) Nothing in this Agreement shall be construed to prevent the City from installing additional links to the ICN, at its own expense, or from interconnecting such links with the I-Net as long as any such interconnection is consistent with the requirements related to use of the I-Net specified herein.

(13) Current I-Net

(A) The Grantee shall continue to maintain and operate the existing Institutional Network as it exists as of January 1, 2005, until the City switches all its current institutional network operations to the I-Net.

(B) The Grantee shall assist the City in migrating its existing institutional network applications to the I-Net.

(14) Other Provisions

(A) If the Grantee performs any of the Work knowing it involves a recognized and material error, inconsistency or omission in this Section without notice to and approval of the City, the Grantee shall bear the cost of correction. If the City permits the Grantee to perform any of the Work knowing it involves a recognized and material error, inconsistency or omission in this Section without notice to and approval of the Grantee, the City shall bear the cost of correction. The Grantee's provision of its plans to the City shall not be construed to render the City responsible for the Grantee's planning or execution of the Work or for detecting any errors, inconsistencies, or omissions therein, except to the extent specifically set forth herein.

(B) The Grantee shall be required to obtain, but shall not be required to pay for, City permits, fees and licenses required solely for the I-Net. The Grantee shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

(C) The Grantee shall supervise and direct the Work, using the Grantee's skill and attention in accordance with accepted construction industry practices. The Grantee shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work

under this Section, unless this Section provides for other specific instructions concerning these matters.

- (D) The Grantee shall keep the work areas related to the Work reasonably clean of debris generated by the Grantee during performance of the Work. Upon final completion of Work, the Grantee shall clean its work areas and remove all waste generated by the Grantee therefrom.
- (E) The Grantee shall take all reasonable steps to provide access for the City to the Work when requested, provided, however, that such access shall not unreasonably impede efforts of the Grantee, its subcontractors or others engaged in the Work.
- (F) The indemnification, insurance, and other right-of-way management provisions of the Ordinance and this Franchise Agreement shall apply to the Work carried out by the Grantee under this Section (as distinct from the performance of the I-Net).

(15) **I-Net Equipment.** The purchase and maintenance of all I-Net equipment necessary to activate the fiber-optic network described in this section 6(h) shall be the responsibility of the City and other Authorized Users.

(i) Costs and Payments Not Franchise Fees: The parties agree that any costs to the Grantee associated with the provision of support for PEG access pursuant to this Agreement, and any payments made to the City pursuant to Section 6 of this Agreement, do not constitute and are not part of a franchise fee, and fall within one or more of the exceptions to 47 U.S.C. § 542. The facilities, equipment and capacity provided for PEG use shall be available at no charge to users, including the City or the entity that manages the channel.

7. FRANCHISE FEE

(a) *Payment to City*

(1) Each year, as compensation for use of Public Rights-of-Way, the Grantee shall pay to the City a Franchise fee of five percent of Gross Revenues.

(2) For each whole or partial year that this Agreement or any extension thereof is in effect, the franchise fees due to the City shall be calculated on an annual basis corresponding to the City's fiscal year. The Grantee shall make its payment of franchise fees on the first day of the fiscal year for which the fees are calculated and due.

(3) The amount due on the first day of the fiscal year shall be no less than ninety (90) percent of the total franchise fees anticipated to be due for that year, as determined by the City ninety (90) days prior to the beginning of the applicable fiscal year and communicated to the Grantee.

(4) No later than the twentieth day after the end of each fiscal quarter, the Grantee shall report to the City, in such detail as the City may require, its gross revenues for the fiscal quarter immediately preceding, and shall remit therewith the amount by which any fee due for that quarter exceeds twenty-five percent (25%) of the amount paid on the first day of that fiscal year. In the event the amounts paid the City during the fiscal year exceed the total amount due for that fiscal year, the excess shall be refunded to the Grantee within twenty (20) days after the filing of its fourth quarterly report and its giving the City notice that a refund is due.

(5) All payments due the City shall be made and delivered to the office of the City Manager or his designee, no later than noon local time of the date due, or, if those offices are closed on that day, no later than noon local time on the next day such offices are open for business.

(b) *Final Payment:* Upon the termination, transfer, sale, or revocation of this Agreement, the Grantee shall immediately submit to the City Manager a financial statement showing the Gross Revenues of the Grantee for the time elapsed since the last quarter for which the Grantee has paid in full to the City the required franchise fees. The Grantee shall pay to the City all fees due not later than thirty (30) days following such termination, but prior to the termination of its performance bond.

(c) *Supporting Information:* Each Franchise fee payment shall be submitted with supporting detail and a statement certified by the Grantee's chief financial officer or an independent certified public accountant, reflecting the total amount of monthly Gross Revenues for the payment period and a breakdown by major revenue categories (such as basic service, cable programming service, premium service, etc.). The City shall have the right to require further reasonable supporting information.

(d) *Late Payments:* In the event that any payment due the City is not made on or before the applicable due date and hour fixed in any section of this Agreement, the payment shall be considered delinquent and in violation of this Agreement, and shall be subject to the remedies and procedures outlined in Section 9. In addition, the Grantee shall pay interest charges computed from such due date, at an annual rate equal to the commercial prime interest rate of the City's primary depository bank during the period such unpaid amount is owed. The interest shall be treated as a cost incidental to enforcing the franchise.

(e) *Audit*

(1) The City shall have the right to inspect and copy records and the rights to audit and to recompute any amounts determined to be payable under this Agreement, whether the records are held by the Grantee, an Affiliate, or any other entity

that collects or receives funds related to the Grantee's operation in the City, including, by way of illustration and not limitation, any entity that sells advertising on the Grantee's behalf.

(2) The Grantee shall be responsible for making available to the City for inspection and analysis all records necessary to confirm the accurate payment of Franchise fees, without regard to by whom they are held. The Grantee shall maintain such records for the term of its Franchise Agreement, and any renewals or extensions thereof.

(3) The City's audit expenses shall be borne by the City unless the audit discloses an underpayment in total of at least five percent, after taking into account payments resulting from the quarterly true-ups pursuant to section 7(a)(4), in which case the costs of the audit shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise. Any additional amounts due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid to the City, such amount shall be subject to interest as specified in Section 7(d).

(4) The Grantee shall maintain its fiscal and financial records and have all relevant fiscal and financial records maintained by others on its behalf in such a manner as to enable the City to determine Gross Revenues.

8. **LIABILITIES**

(a) *Indemnification by the Grantee.* The Grantee shall indemnify the City against any third-party action against the City arising out of the Grantee's negligence or intentional misconduct. The Grantee shall not be required to indemnify the City for the negligent or intentionally wrongful acts of the City, its officials, boards, commissions, agents or employees. This provision shall not be construed to grant a right of action to any third party.

(b) *Indemnification by the City.* The City shall indemnify the Grantee against any third-party action against the Grantee arising out of the City's negligence or intentional misconduct. The City shall not be required to indemnify the Grantee for the negligent or intentionally wrongful acts of the Grantee, its officers, boards, agents or employees. This provision shall not be construed to grant a right of action to any third party.

(c) *Indemnification Procedures.* The City or Grantee, as the case may be ("Indemnified Party"), shall promptly notify the party against whom indemnification under this Agreement is sought (the "Indemnifying Party"), in writing, of any claim for indemnification, specifying in reasonable detail the nature of the loss, and, if known, the amount, or an estimate of the amount, of the liability arising therefrom. The Indemnifying Party may within ten (10) days after receiving such notice provide the

Indemnified Party with written notice that it will assume defense of the matter. The Indemnified Party may also participate in this defense directly, at its own expense. The Indemnifying Party shall not be liable for any settlement of any such claim effected without its prior written consent, which shall not be unreasonably withheld; provided that if the Indemnifying Party does not actually assume the defense of a claim within thirty days after notice thereof, the Indemnified Party may settle or defend such claim without the consent of the Indemnifying Party. The Indemnifying Party, if it assumes the defense of a claim, shall not settle such claim without the prior written consent of the Indemnified Party, which shall not unreasonably be withheld.

(d) **Respondeat Superior.** Any contractor or subcontractor performing for the Grantee in the service area of this Franchise Agreement shall be deemed to be an agent of the Grantee, and the Grantee shall be responsible and liable for the acts of the contractor or subcontractor and its employees while so performing for the Grantee.

9. PERFORMANCE GUARANTEES AND REMEDIES

(a) Performance Bond

(1) Grantee shall obtain and maintain during the entire term of the Franchise, and any renewal or extensions thereof, except as provided in Section 9(b) or 9(a)(3) below, a performance bond in the City's favor, in the amount of \$250,000, to ensure the Grantee's faithful performance of its obligations and payment of any sum due to the City pursuant to this Franchise Agreement or Ordinance. The bond shall be substantially in the form provided in Exhibit C.

(2) The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City, consistent with the parameters contained in this section 9; and shall contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(3) **Reduction of Bond.** Upon written application by the Grantee, the City may, at its sole option, in writing, permit the amount of the bond to be reduced or waive the requirements for a performance bond. Reductions granted or denied upon application by the Grantee shall be without prejudice to the Grantee's subsequent applications or to the City's right to require the full bond at any time thereafter. However, no application shall be made by the Grantee within one (1) year of any prior application.

(b) Letter of Credit

(1) In addition to the performance bond required under Section 9(a), the Grantee may file and maintain with the City an irrevocable letter of credit from a financial institution licensed to do business in Iowa in the amount of \$25,000, to serve the same purposes as set forth therein. The form and content of the letter of credit shall be approved by the City.

(2) The Grantee and its surety shall be jointly and severally liable under the terms of the letter of credit as specified in Section 9(a).

(3) The letter of credit shall provide for thirty (30) days' prior written notice to the City of any intention on the part of the Grantee to cancel, fail to renew, or otherwise materially alter its terms.

(4) The letter of credit shall be released only upon expiration of the Franchise or upon the replacement of the letter of credit within the time specified herein.

(c) *Rights Cumulative:* The rights reserved to the City herein are in addition to all other rights of the City, whether reserved herein or authorized by applicable law, and no action, proceeding, or exercise of a right with respect to such performance bond or letter of credit will affect any other right the City may have, provided that to the extent that penalties are applied to a Grantee under this Section 12(1), a Grantee shall not be subject to liquidated damages payable to the City for the same violation. Neither the filing of a letter of credit with the City, nor the receipt of 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 the terms of its Franchise for damages, either to the full amount of the letter of credit or otherwise.

(d) *Procedures for Remedying Violations*

(1) **Notice of Violation.** To apply remedies for any failure to comply with this Franchise Agreement or the Ordinance, the City shall notify the Grantee in writing of the exact nature of such alleged noncompliance.

(2) **The Grantee's Right to Cure or Respond.** The Grantee shall have the period of time listed in section 9(d)(3): (A) to respond to the City, contesting the assertion of such noncompliance; or (B) to cure such default; or (C) in the event that, by the nature of such default, it cannot be cured within the cure period specified in section 9(d)(3), to initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

(3) **Cure Periods.** Grantee shall have the following period of time to implement the measures listed in section 9(d)(2), above:

(A) For any breach of this Franchise Agreement that poses an actual imminent threat of serious personal injury or property damage: no cure period.

- (B) For failure to timely make franchise fee payments required by section 7: Two business days from the date such payment was due.
- (C) For any other breach of this Franchise Agreement or Ordinance not listed above: fifteen (15) calendar days after Grantee's receipt of written notice pursuant to Section 9(c)(2), unless the City shows that a different time period is justifiable.

(4) **Initial Violation.** The City shall not impose penalties or liquidated damages for the Grantee's first violation, during the period during which this Franchise Agreement is in effect, of any of the following provisions of this Agreement or the Cable Ordinance, although the Grantee shall nonetheless be required to comply with such provisions:

- (A) Agreement section 4(a) (line extension);
- (B) Agreement sections 5(a)-5(h), 5(j) (system facilities, other than the updating fund);
- (C) Agreement sections 6(a)-6(h)(4), 6(h)(8), 6(h)(11)-6(h)(14) (PEG requirements, except for certain general I-Net requirements);
- (D) Agreement sections 7(a), 7(c)-7(e) (franchise fees, except for a one-time final payment);
- (E) Agreement section 8 (liabilities);
- (F) Agreement sections 9(a)-9(b) (performance bond and letter of credit);
- (G) Ordinance, Title I sections 9-14 (construction and related provisions)
- (H) Ordinance, Title I sections 17-18 (audits, reports and records)
- (I) Ordinance, Title I, section 19 (bond or letter of credit);
- (J) Ordinance, Title I, section 20 (insurance);
- (K) Ordinance, Title II, section 3 (cable construction);
- (L) Ordinance, Title II, section 6 (consumer protection);
- (M) Ordinance, Title II, section 8 (franchise fee);

- (N) Ordinance, Title II, section 9 (tests and inspections);
- (O) Ordinance, Title II, section 10 (cable insurance);
- (P) Ordinance, Title II, section 11 (cable reports and records).

(5) **City Council Review At Public Meeting.** In the event that the Grantee fails to respond to the notice described in section 9(d)(1) pursuant to the procedures set forth in section 9(d)(2), or in the event that the alleged default is not remedied within the period specified in section 9(d)(3) above, then the City, if it intends to continue its investigation into the alleged default, shall provide the Grantee with a meaningful opportunity to be heard at a public meeting of the City Council, which can be a regularly scheduled Council meeting. The City shall provide the Grantee at least ten business (10) days' prior written notice of such meeting, which specifies the time, place and purpose of such meeting and the consequence that the City seeks to impose, and provides the Grantee a meaningful opportunity to be heard.

(6) **Enforcement.** Subject to applicable federal and state law, in the event the City, after the meeting set forth in section 9(d)(5), determines that the Grantee is in material violation of any provision of the Franchise, the City may invoke remedies as described in section 9(f), subject to the provisions of section 9(d)(4).

(e) Security Fund Procedures

(1) The performance bond specified under Section 9(a), and the letter of credit specified under Section 9(b), shall be referred to jointly or severally as the Security Fund.

(2) The following procedures shall apply to drawing on the Security Fund:

- (A) If within five (5) business days after the City has issued a written final notice of its determination after concluding the procedures set forth in section 9(d), the Grantee fails to make timely payment to the City of any amount due, the City may withdraw the amount thereof from the Security Fund.
- (B) Within three (3) days of a withdrawal from the Security Fund, the City shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Grantee.
- (C) If at the time of a withdrawal from the Security Fund by the City, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Grantee to the City until it is paid.

- (D) No later than thirty (30) days after mailing of notification to the Grantee by certified mail, return receipt requested, of a withdrawal under the Security Fund, the Grantee shall restore the Security Fund to the total amount specified herein.
- (E) Upon termination of the Franchise under conditions other than those stipulating forfeiture of the Security Fund, the balance then remaining in the Security Fund shall be returned to the Grantee within ninety (90) days of such termination, provided that there is then no outstanding default on the part of the Grantee.

(f) *Remedies:* The remedies contained herein, except for the limitations specified in section 9(f)(5), are in addition to any other remedies available at law or equity, and the City may, to the extent consistent with federal and state remedy law, apply any one or a combination of the following remedies in the event the Grantee violates the Cable Ordinance, this Franchise Agreement, or applicable state or federal law:

- (1) Apply any remedy provided pursuant to this Agreement.
- (2) Revoke the Franchise or shorten the term of this Agreement pursuant to the procedures specified in this Agreement.
- (3) Impose penalties available under the Cable Ordinance or other applicable state and local laws for violation of City ordinances.
- (4) In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction.
- (5) Any action, proceeding or exercise of a right by the City under this Section does not constitute an election of remedies or a waiver of any other right the City may have, including the right to seek specific performance of a franchise obligation, except that (A) the City's election of liquidated damages shall take the place of any right to obtain actual damages over and above the payment of any amounts otherwise due, and (B) to the extent that penalties are applied to a Grantee under the Cable Ordinance, a Grantee shall not be subject to liquidated damages payable to the City for the same violation.

(g) *Liquidated Damages:* Because the Grantee's failure to comply with certain provisions of this Agreement or the Ordinance will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and the Grantee agree to the following liquidated damages for the following violations of this Agreement and the Ordinance, which represent both parties' best estimate of the damages resulting from the specified violation. To maintain that estimate, the parties agree that the liquidated damage amounts are in 2005 dollars and shall be increased each year by the increase in the Inflation Index. Such damages shall be assessed from the date on

which the City gives written notice to the Grantee pursuant to section 9(d)(1), but shall not be applied except according to the procedures specified in section 9(d).

(1) For failure to substantially complete construction of either (A) the System Upgrade pursuant to section 5(c), or (B) the I-Net pursuant to section 6(h), in accordance with this Agreement: \$500/day for each violation for each day the violation continues;

(2) For failure to comply with requirements for public, educational and governmental use of the System: \$200/day for each violation for each day the violation continues, in addition to any monetary payment due under this Agreement or the Cable Ordinance;

(3) For failure to supply information, reports, or filings lawfully required under this Agreement, the Cable Ordinance or applicable law: \$200/day for each violation for each day the violation continues;

(4) For violation of customer service standards as set forth in the Cable Ordinance: up to \$200 per violation, depending on the nature, scope, and severity of the violation, as reasonably determined by the City;

(5) For failure, unless such failure is beyond the Grantee's control, of the system to perform in the event of a public emergency: \$250 per occurrence;

(6) For failure to render any payment due to the City: \$100 per day, in addition to the original amounts due;

(7) For failure to file, obtain or maintain any required Security Fund in a timely fashion: \$50 per day;

(8) For failure to restore damaged property: \$50 per day, in addition to the cost of the restoration as required in this Agreement or the Ordinance;

(9) For violation of technical standards established by the FCC: \$100 per day.

(10) For any given provision of this Agreement or the Ordinance, if the City does not impose liquidated damages or penalties for that provision at any time in the first four years after the Effective Date (not counting any instances in which the City imposes such liquidated damages or penalties and such imposition is overturned by a tribunal of competent jurisdiction), then the liquidated damage amounts specified in sections 9(g)(1) through 9(g)(9) above shall be reduced, for the remainder of the Franchise term, to half the amounts specified above.

(h) Shortening, Revocation, or Termination of Franchise

(1) Upon completion of the term of this Franchise Agreement, if a new, extended, or renewed Franchise is not granted to the Grantee by the City, the Grantee's

right to occupy the Public Rights-of-Way shall terminate, subject to applicable federal law.

(2) Subsequent to completion of the procedures set forth in section 9(d), if the City has given notice pursuant to section 9(d)(5) that it is seeking revocation of the Franchise Agreement, the City shall have the right to revoke the Franchise (or, alternatively, at the City's discretion, pursuant to the same procedures, to shorten the remaining term of the Franchise Agreement to a term not less than thirty-one (31) months from the date of the action shortening the Franchise term), for the Grantee's failure to construct, operate, or maintain the Cable System as required by this Agreement; for defrauding or attempting to defraud the City or Subscribers; or for any other material breach of this Agreement or material violation of the Cable Ordinance.

(3) If the City revokes the Franchise, or if for any other reason the Grantee abandons, terminates, or fails to operate or maintain service to its Subscribers, the following procedures and rights are effective:

- (A) The City may require the former Grantee to remove its facilities and equipment at the former Grantee's expense and restore affected sites as required in the Cable Ordinance, or permit the former Grantee to abandon such facilities in place. If the former Grantee fails to do so within a reasonable period of time, the City may have the removal done at the former Grantee's and/or surety's expense.
- (B) The City may require the former Grantee to continue operating the Cable System, including the I-Net, as specified in Section 4(b).
- (C) In the event of revocation, the City, by resolution, may acquire ownership of the Cable System at an equitable price in accordance with federal law.
- (D) If a Cable System is abandoned by the Grantee, the ownership of all portions of the Cable System in Public Rights-of-Way shall revert to the City and the City may sell, assign, or Transfer all or part of the assets of the System.

10. MISCELLANEOUS PROVISIONS

(a) *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, and the promises and obligations herein shall survive the expiration date hereof.

(b) *Severability*

(1) If any provision of this Agreement or any application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, except that the invalidity may invoke the provision in Section 10(b)(1) herein for loss of benefit, and to this end and extent the provisions of this Agreement are severable.

(2) If any provision of this Agreement becomes invalid and results in a significant loss of benefit to the City or Grantee or both, as determined by either party, then the party claiming the loss may demand renegotiation.

(3) Such a demand for renegotiation must be made and delivered to the other party within one (1) year after the date both the City and Grantee have received notice of the invalidity. Within fifteen (15) days of receipt of such a demand, both the City and Grantee must meet in Dubuque, Iowa and begin the renegotiations. The renegotiations shall be limited to reforming the franchise and restoring the party suffering the loss to its former position with equivalent benefit.

(4) The reformed franchise shall be effective from the date the debilitating invalidity took place, even if such reformation is retroactive and involves a settlement for loss of past services.

(5) The purpose of this Section is to maintain the continuity of the contract in conformity with the expressed intentions of the parties when the contract was formed and, where applicable, as later amended.

(c) *Grantee Bears Its Own Costs:* Unless otherwise expressly provided in this Agreement, all acts that the Grantee is required to perform must be performed at the Grantee's own expense.

(d) *Force Majeure:* The Grantee shall not be deemed in default of provisions of this Agreement or the Cable Ordinance where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods, inability to obtain necessary consents and/or permits, or other causes beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise.

(e) *Governing Law:* This Franchise Agreement shall be governed in all respects by the law of the State of Iowa.

(f) *Notices:* Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

(1) Notices to the Grantee shall be mailed to:

Vice President, Legal and Regulatory Affairs
Mediacom Communications Corporation
100 Crystal Run Road
Middletown, NY 10941

with a copy to:

Region Vice President
Mediacom Communications Corporation
3900 26th Avenue
Moline, IL 61265

(2) Notices to the City shall be mailed to:
City Manager
City of Dubuque
City Hall
50 West 13th Street
Dubuque, Iowa 52001

with a copy to:

Corporation Counsel
City of Dubuque
City Hall
50 West 13th Street
Dubuque, Iowa 52001

(3) The Grantee shall at all times keep the City advised as to which individual(s) are authorized to act on behalf of the Grantee and whose acts will be considered to bind the Grantee.

(g) *Time of the Essence:* Whenever this Agreement sets forth any time for any action to be performed by or on behalf of the Grantee, such time shall be deemed to be of the essence, and any failure of the Grantee to perform within the time allotted, unless otherwise agreed to by the City or provided for herein, shall be sufficient grounds for the City to revoke the franchise pursuant to the procedures herein.

(h) *Captions and References*

(1) The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

(2) When any provision of the Cable Ordinance is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the Cable Ordinance or City law that may also govern the particular matter in question.

(i) *Entire Agreement:* This Agreement, including all exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof as of the date set forth above. This Agreement supersedes any prior understandings, agreements, and communications (oral or written).

(j) *Understanding and Consent:* This Agreement is freely and voluntarily given by each of the parties, without any duress or coercion, and after each party has consulted with its counsel. Each party and its counsel have participated fully in the review and revision of this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. Each party hereto has carefully and completely read all of the terms and provisions of this Agreement, and acknowledges that, to the best of its knowledge, each provision is lawful and enforceable. If the Grantee believes that the terms of the franchise or any City law or regulation conflicts with any state or federal law or regulation, the Grantee shall notify the City immediately upon learning of the conflict.

Agreed to this 2nd day of May, 2005.

City of Dubuque, Iowa,
A municipal corporation of Iowa

By: Michael C. Van Milligen, City Manager

Attest:

Jeanne F. Schneider, CMC
City Clerk

MCC IOWA, LLC,
A Delaware Limited Liability Company

By: Bruce Gluckman,
Vice-President of Legal and Regulatory Affairs

EXHIBIT A

ACCEPTANCE OF FRANCHISE BY THE GRANTEE

MCC IOWA, LLC ("Grantee") hereby accepts the franchise to construct, reconstruct, operate and maintain a cable television system within the public rights-of-way in the City for the sole purpose of providing Cable Service offered by Ordinance No. _____ of City of Dubuque, Iowa ("City"), as amended ("Granting Ordinance"). By this acceptance, Grantee agrees that, as set forth in the Franchise Agreement, it shall be bound by the terms and conditions of the Franchise Agreement, any amendments thereto, the City of Dubuque Cable Right-of-Way Ordinance, and other applicable law (collectively, the "Franchise Documents").

The Grantee declares that it has carefully read all of the terms and conditions of the Franchise Documents, and accepts and agrees to abide by same.

Upon the Franchise becoming effective, the Grantee shall be immediately bound to maintain and operate a Cable System under the terms, conditions and limitations set forth in the Franchise Documents and other applicable law, as of the time and date it files this written acceptance with the City.

AGREED TO THIS _____ DAY OF _____, _____.

MCC IOWA, LLC

By: _____

Its: _____

EXHIBIT B

I-NET SITE LIST

