

ORDINANCE NO. 167

AN ORDINANCE TO RENEW THE CABLE FRANCHISE LAWFULLY HELD BY MEDIACOM MINNESOTA LLC, ITS SUCCESSORS OR ASSIGNS, THE NONEXCLUSIVE RIGHTS, PRIVILEGES AND AUTHORITY TO CONSTRUCT, OPERATE, MAINTAIN, REPAIR, REPLACE, RECONSTRUCT AND REMOVE A CABLE TELEVISION SYSTEM ACROSS PUBLIC PROPERTY IN THE CITY LIMITS FOR A TERM OF FIFTEEN (15) YEARS.

BE IT ORDAINED by the City Council of the City of Ivanhoe, Minnesota that the following agreement shall replace ordinance No. 149 in its entirety upon the effective date as established herein:

CABLE TELEVISION FRANCHISE

This Franchise Agreement ("Franchise") is between the City of Ivanhoe, Minnesota, hereinafter referred to as "the Franchising Authority" and Mediacom Minnesota LLC hereinafter referred to as "the Grantee."

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise granted under the existing applicable Minnesota Statutes, federal laws and regulations, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

SECTION 1
Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- B. "Cable Act" means Title VI of the Communications Act of 1934, as amended.

- C. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- D. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.
- E. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- F. "Franchising Authority" means the City of Ivanhoe, Minnesota.
- G. "Grantee" means Mediacom Minnesota LLC or the lawful successor, transferee, or assignee thereof.
- H. "Gross Revenue" means any revenues received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, provided, however, that Gross Revenues shall not include any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC User Fee.
- I. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- J. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.
- K. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.
- L. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

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

SECTION 2
Grant of Franchise

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

2.2 Compliance with Federal, State and Local Laws. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control.

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

B. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and Franchising Authority.

2.3 Level Playing Field. The Franchising Authority shall not authorize or permit any Person providing video programming services and/or Cable Services to enter into the Franchising Authority's Public Ways in any part of the Service Area on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise. A Franchising Authority may require insurance or surety in excess of that required under this Franchise in recognition of such operator being either a new entrant or because of the construction requirements specified in that operator's agreement with the Franchising Authority.

2.4 Term. The Franchise granted hereunder shall be for an initial term of fifteen (15) years commencing on the effective date of the Franchise as set forth in subsection 9.6, unless otherwise lawfully terminated in accordance with the terms of this franchise.

SECTION 3 **Standards of Service**

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

3.2 Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

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

3.4 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to

prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System.

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

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

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

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

3.10 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements

of subsection 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.11 Cable Service to Public Buildings. The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's Cable System or any loss or damage to Grantee's Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

3.12 Emergency Use. If the Grantee provides an Emergency Alert System ("EAS") such EAS shall be operated in accordance with FCC regulations. The Franchising Authority shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

3.13 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental

entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

3.14 Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. Upon request of the Franchising Authority, the Grantee shall provide copies of any required FCC tests completed on the Grantee's System within ten (ten) days of receiving the Franchising Authority's request. Any special testing procedures, methods, and costs shall be determined by mutual agreement of the Grantee and Franchising Authority.

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

3.16 Subscriber Privacy.

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

B. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to Franchising Authority for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

C. Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (B) of this Section.

3.17 Subscriber Inquiry and Complaint Procedures.

A. Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week, 365 days a year basis. During normal business hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries.

B. Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the FCC and Franchising Authority where applicable and lawful.

C. Subscriber requests for repairs shall be performed to the extent possible within thirty-six (36) hours of the request unless conditions beyond the control of Grantee prevent such performance. Grantee may schedule appointments for Installations and other service call either at a specific time or, at a maximum, during a four hour time block during normal business hours. Grantee may also schedule service calls outside normal business hours for the convenience of customers. Service call appointments must be met in a manner consistent with FCC standards.

SECTION 4
Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The City shall not impose a franchise fee against the original Grantee of this Franchise (Mediacom Minnesota LLC) unless and until the City and Grantee mutually agree otherwise.

B. **Limitation on Franchise Fee Actions.** The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the Franchising Authority.

4.2 Rates and Charges. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the renewal provisions of federal law.

B. In addition to the procedures set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express renewal provisions of the Cable Act.

E. Renewal Term. Any renewal of this Franchise shall be limited to a term of not more than fifteen (15) years.

4.4 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 **Transfer, Sales, and Corporate Change.** In the event of any proposed sale, transfer, corporate change, or assignment pursuant to this Section, Franchising Authority shall have the right of first refusal of any bona fide offer to purchase the System. Bona fide offer, as used in this Section, means an offer received by the Grantee which it intends to accept subject to City's rights under this Section. This written offer must be conveyed to the Franchising Authority along with the Grantee's written acceptance of the offer contingent upon the rights of the Franchising Authority provided for in this Section. to purchase the System for the value of the consideration proposed in such transaction. Franchising Authority's right to purchase shall arise upon Franchising Authority's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to the Franchising Authority in writing and separate from any general announcement of the transaction.

The Franchising Authority shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:

- i. If the Franchising Authority does not indicate to Grantee in writing, within thirty (30) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as stated above, its intention to exercise its right of purchase; or
- ii. It approves the assignment or sale of the Franchise as provided within this Section or applicable law.

The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior written notice to and approval of the Franchising Authority in conformance with Minnesota State Statutes 238.083 . No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness.

4.6. **Administration of Franchise.** The Franchising Authority or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The Franchising Authority, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.

SECTION 5 **Books and Records**

5.1 **Books & Records.** The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee and no more than once annually may review

such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

5.2 Subscriber Contracts. Grantee shall file with the Franchising Authority any standard form Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the Franchising Authority a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during normal business hours.

5.3 Public Records. Grantee shall give the Franchising Authority and Subscribers written notice of any change in a rate or charge at least thirty (30) days one billing cycle prior to the effective date of the change in accordance with 47 CFR 76.964. The Franchising Authority shall maintain and provide such records to be available for public inspection. Grantee shall not be required to provide advance notice for changes relating to franchise fees, access charges or any franchise related costs consistent with federal law. Bills must be clear, concise, and understandable, with itemization of all charges

SECTION 6 **Insurance and Indemnification**

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System in the Service Area provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

SECTION 7
Enforcement and Termination of Franchise

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

B. Commence an action at law for monetary damages or seek other equitable relief; or

C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

7.5 Revocation. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court which shall have the power to review the decision of the Franchising Authority *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

7.7 **Abandonment of Service.** Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the Franchising Authority. Grantee may not abandon the System or any portion thereof without an agreement compensating Franchising Authority for damages resulting from the abandonment, including all costs incident to removal of the System.

SECTION 8
Access Channel Provisions

8.1 **Public, Educational and Government Access.** Nothing herein shall diminish the City's rights to secure access channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference. When applicable, City shall provide ninety (90) days prior written notice to Grantee of City's intent to activate access channels.

SECTION 9
Miscellaneous Provisions

9.1 **Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

9.2 **Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.

9.3 **Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, c) within five (5) business days after having been posted in the regular mail or d) or the next business day if sent by express mail or overnight air courier.

The notices or responses to the Franchising Authority shall be addressed as follows:

Office of the City Clerk
City Hall of Ivanhoe
Ivanhoe, Minnesota 56142

The notices or responses to the Grantee shall be addressed as follows:

Mediacom
PO Box 178
Yankton, SD 57078-0178
ATTN: Government Relations Manager

with a copy to:

Vice President of Legal & Regulatory Affairs
Mediacom
100 Crystal Run Road
Middletown, NY 10940

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

9.4 Descriptive Headings. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

9.5 Severability. If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

9.6 **Effective Date.** The effective date of this Franchise is the date accepted by the Grantee, pursuant to the provisions of applicable law. This Franchise shall expire on June 14, 2019, unless extended by the mutual agreement of the parties.

Considered and approved this 14th day of June, 2004.

City of Ivanhoe, Minnesota

Signature: Sharon Steffen

Name/Title: Mayor

Accepted this 24th day of August, 2004, subject to applicable federal, state and local law.

Mediacom Minnesota LLC

Signature: Bruce J. Gluckman

Name/Title: Bruce J. Gluckman
VP Legal & Regulatory Affairs