

ORDINANCE NO. 103.

AN ORDINANCE GRANTING A RENEWED FRANCHISE TO NEW ULM TELECOM, INC., TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF NEW GERMANY, MINNESOTA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City of New Germany (“City”) ordains:

STATEMENT OF INTENT AND PURPOSE

The City intends, by the adoption of this renewed Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such a development can contribute significantly to the communication needs and desires of residents of the City. Further, the City may achieve better utilization and improvement of public services with the development and operation of the Cable System.

Adoption of this Franchise is, in the judgment of the Council, in the best interests of the City, its residents, and the community.

FINDINGS

In the review of the franchise request by New Ulm Telecom, Inc. (“Grantee”), and upon completion of a public proceeding after notice and an opportunity to be heard, the City makes the following findings:

1. The Grantee’s technical ability, financial condition, legal qualifications, and character were considered and are approved;
2. Grantee’s plans for operating the System were considered and found adequate and feasible;
3. The Franchise granted to Grantee by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

SECTION 1.

SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Communications Ordinance.

2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The words “shall” or “must” are always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.
- a. “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7) (1993).
 - b. “Cable Service” or “Service” means the one-way transmission to Subscribers of video programming, or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
 - c. “Cable System” or “System” means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment, or facilities located in the City and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and other forms of electronic signals in the City. System as defined herein is consistent with the definition set forth in Minn. Stat. § 238.02, subd. 3.
 - d. “City” means the City of New Germany, Minnesota, acting by and through its City Council.
 - e. “Class IV Channel” means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.
 - f. “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.
 - g. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
 - h. “Franchise” or “Cable Franchise” means this ordinance, and the regulatory and contractual relationship established hereby.
 - i. “Franchise Fee” means a fee or assessment imposed by the City on a Grantee, or a Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability; (ii) any payments which are required by this Franchise for, or in

support of the use of public, educational, or governmental access facilities; (iii) requirements or charges incidental to awarding or enforcing this Franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages; (v) any fee imposed under Title 17 of the United States Code.

- j. “Grantee” is New Ulm Telecom, Inc., its agents and employees, lawful successors, transferees or assignees.
- k. “Gross Revenues” means all revenue received directly or indirectly by the Grantee from the operation of its System to provide Cable Service. The term Gross Revenues shall not include bad debt, or any taxes on services furnished by Grantee which are imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- l. “Installation” means the connection of the System from feeder cable to the point of connection, including any standard installation and any custom installation.
- m. “Lockout Device” means an optional mechanical or electrical capability which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable System.
- n. “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- o. “Right-of-Way” or “Rights-of-Way” means the area on, below, or above any real property in the City in which City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including any other Rights-of-Way dedicated for travel purposes and utility easements.
- p. “Right-of-Way Ordinance” means any ordinance adopted by the City creating requirements regarding regulation, management and use of Rights-of-Way, including registration and permitting requirements.
- q. “Standard Installation” means any residential installation which can be completed using a Drop of 125 feet or less.
- r. “Subscriber” means any Person who lawfully receives Service via the System.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable System or provide Cable Service in City unless such Person shall first obtain and hold a valid Franchise. The City shall at all time comply with the Minnesota level playing field statute at Minn. Stat. Section 238.08 and any other applicable state or federal level playing field requirements.
2. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. At the time of acceptance of this Franchise, Grantee shall reimburse the City for all reasonable costs and fees incurred in processing and awarding this franchise up to a maximum of Seven Hundred Fifty Dollars and no/cents (\$750.00). The Grantee may treat such reimbursement as a franchise fee to the extent permitted by applicable law.
3. Notwithstanding any provision to the contrary, if another operator, legally authorized by state or federal law, makes available for purchase by Subscribers or customers Cable Service or its functional equivalent (including video programming under 47 U.S.C. § 571(a)(3) or § 573) within the City without a Franchise or other similar lawful authorization granted by the City and the City has the lawful authority to require a franchise from that operator, then Grantee shall have the right to petition the City to modify this Franchise and the parties shall negotiate said modifications within 60 days.
4. Grant of Nonexclusive Authority.
 - a. The Grantee shall have the right and privilege pursuant to this Franchise, subject to the requirements of any applicable ordinance, rule or procedure, to construct, erect, operate and maintain a Cable System in, upon, along, across, above, over and under the Rights-of-Way in the City and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below-ground facilities available to Grantee to the extent it is technically feasible and commercially reasonable to do so.
 - b. Notwithstanding the above grant to use Rights-of-Way, use of such Rights-of-Way shall not be inconsistent with the terms and conditions by which they were created or dedicated, with the present use thereof, and with all legal requirements related to the use thereof including the terms and conditions of any applicable Right-of-Way Ordinance.
 - c. This Franchise shall be nonexclusive and City reserves the right to grant similar use to any Person at any time during the term of this Franchise.
 - d. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

5. Franchise Term. This Franchise shall be in effect for a period of ten (10) years from the date of acceptance by Grantee, unless sooner renewed, revoked, or terminated as provided herein.
6. Previous Franchises. Upon acceptance by Grantee, this Franchise shall supersede and replace any prior ordinance granting a Franchise to Grantee.
7. Compliance with Applicable Laws, Resolutions and Ordinances. The Grantee shall at all times during the term of this Franchise be subject to any lawful, non-discriminatory exercise of the police power, statutory rights, local ordinance-making authority, and eminent domain rights of the City. This Franchise shall comply with Minnesota franchise standards contained in Minn. Stat. § 238.01 et seq.
8. Territorial Area Involved/Service Extension.
 - a. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. Grantee shall be required to extend Service without charge to any requesting Person or area in which Service is requested in the event the Grantee does not have to construct more than 300 feet of new plant in order to serve each new Subscriber. Grantee shall extend Service to any Person requesting Service, regardless of the amount of new plant required, in the event the requesting Person agrees to pay the incremental cost of construction beyond 300 feet. In the event several Persons request Service, the incremental construction costs will be shared on a pro rata basis.
 - b. Grantee shall construct and activate plant to provide Service within a reasonable time.
 - c. Access to Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides.
9. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City of New Germany
 City Clerk
 300 Broadway Street East
 New Germany, MN 55367-0177

If to Grantee: New Ulm Telecom, Inc.
 27 North Minnesota
 P.O. Box 697

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

SECTION 3.

CONSTRUCTION STANDARDS

1. Construction Codes and Permits.
 - a. Grantee shall obtain all lawful and necessary permits from City before commencing any construction or extension of System, including the opening or disturbance of any Right-of-Way, or private or public property within City. Grantee shall comply with all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the System in the City and give due consideration at all times to the aesthetics of the property.
 - b. Consistent with its Right-of-Way Ordinance, the City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.
2. Repair of Rights-of-Way and Property. Any and all Rights-of-Way or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to the same condition as that prevailing prior to Grantee's work, or reasonably similar condition, as approved by City in the case of Rights-of-Way and other public property, which approval shall not be unreasonably withheld. If Grantee fails to promptly perform the restoration required herein after 30 days' notice from City, City may perform the restoration of the Rights-of-Way, public, or private property as required herein at Grantee's expense.
3. Conditions on Right-of-Way Use.
 - a. Nothing in this Franchise shall be construed to prevent City from adopting and enforcing requirements for the usage of Rights-of-Way or from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
 - b. Upon the City's written request the Grantee shall provide a complete set of strand maps showing the routing of the Cable System plant and facilities in

the Streets, but excluding detail on proprietary electronics or other proprietary information that is related to Grantee's specific design of the Cable System contained therein and Subscriber Drops. The maps shall be provided in an electronic format acceptable to the City without Grantee incurring unreasonable expense. Upon written request, Grantee shall also provide strand map updates. The City shall have the right to review Grantee's entire system maps (in addition to the strand maps) at a mutually agreed upon location within the City but such additional map will be only for review, that City will not be entitled to retain a copy. All System transmission and distribution structures, lines and equipment erected by the Grantee shall be located so as not to obstruct or interfere with the use of Right-of-Way and to cause minimum interference with the rights of property owners who abut any of said Right-of-Way and not to interfere with existing public utility installations.

- c. If at any time during the period of this Franchise City shall elect to alter or change the grade or location of any Right-of-Way, the Grantee shall, upon reasonable notice and in a manner consistent with applicable ordinances, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If the City enters into an agreement to reimburse other occupants of the Right-of-Way for such relocation or removal, Grantee shall be likewise reimbursed.
- d. The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all requirements of the City. Grantee shall use its best efforts to obtain the permission and consent of any utility company for the use of existing poles, conduits or other wire-holding structures located in City. Grantee shall utilize existing poles, conduits, or other wire-holding structures of existing utilities to the extent technically and economically feasible. City shall have no obligation to assist Grantee in obtaining the consent for use of existing facilities from any utility company.
- e. The Grantee shall, upon request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
- f. The Grantee shall have the authority to trim any trees upon and overhanging the Rights-of-Way only to the extent necessary to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.
- g. Grantee will endeavor to give prior notice to any private property owners who will be directly affected or impacted by Grantee's work in Rights-of-Way.

4. Undergrounding of Cable. Grantee shall place its System and facilities underground in areas of the City where all other utility lines are placed underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe, all as may be approved by City in accordance with applicable requirements.
5. Drop Burial. Grantee shall bury all Drops within a reasonable time.
6. Safety Requirements.
 - a. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
 - b. The Grantee shall install and maintain its System and other equipment and facilities in accordance with the National Electric Safety Code, all other applicable federal, state and local laws and regulations, and in such manner that they will not interfere with private radio, police and fire communications or any installations of City or of any public utility serving City.
 - c. The Grantee shall install and maintain the System and all other equipment and facilities in, over, under and upon the Rights-of-Way, wherever situated or located, in accordance with the Right-of-Way Ordinance, the National Electric Safety Code, all other applicable federal, state and local laws and regulations, and in a condition so that the same shall not endanger public health or safety.
7. Emergency Alert System. To the extent required by the FCC's regulations, the Grantee shall provide an Emergency Alert System ("EAS") which shall be operated and available to the City in the event of an emergency or disaster. To the extent provided by law, the City will hold the Grantee harmless from any claims arising out of the City's use of EAS.

SECTION 4.

DESIGN PROVISIONS

1. Operation and Maintenance of System. The Grantee shall render good quality Service, make repairs promptly, and interrupt Service only for good cause and for the shortest time possible. The Grantee shall operate and maintain a system providing 750 MHz bandwidth.
2. 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 Code of Federal Regulations 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.

3. System Testing. The City may review FCC and other technical reports provided by the Grantee or procured by the City at any time. The City may engage any consultant, engineer or expert to perform System testing and review as it deems necessary. The City shall endeavor to so arrange its request for such System testing to minimize hardship or inconvenience to Grantee or to the Subscribers. Where testing is conducted to resolve System performance problems or complaints, the City's costs of such testing shall be reimbursed by the Grantee if, before conducting such tests, the City affords Grantee notice and at least ten (10) days to cure the problems or complaints and, in City's reasonable determination, such problems or complaints remain unresolved after the cure period.
4. FCC Reports. Upon written request from the City, the results of any tests required to be filed by Grantee with the FCC shall be provided to the City or its designee within ten (10) days of the receipt of the written request.
5. Nonvoice Return Capability. Grantee is required to use cable having the technical capacity for nonvoice return communications.
6. Lockout Device. Upon the request of a Subscriber, Grantee shall provide a Lockout Device.

SECTION 5.

SERVICES PROVISIONS

1. Regulation of Service Rates.
 - b. The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or state law(s).
 - c. A list of Grantee's current Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee shall give the City and Subscribers written notice of any change in a rate or charge no less than thirty (30) days prior to the effective date of the change.
2. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. Grantee shall have the right to market consistent with local ordinances and other applicable laws and regulations.
3. Service Complaints.
 - a. Availability. Grantee will maintain an adequate number of local, toll-free or collect call telephone access lines which will be available to its Subscribers 24 hours a day, seven days a week so as to receive Subscriber complaints, requests, and inquiries. During normal business hours, at least 8 a.m. to 5 p.m., and some evening or weekend hours, Grantee shall ensure that trained

representatives are available to respond to Subscriber inquiries.

- b. Telephone Answer Time and Busy Signals. Telephone calls shall be answered by a customer representative within thirty (30) seconds, including wait time. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time measured on a quarterly basis. Subscribers will receive a busy signal less than three (3) percent of the time. The Grantee will comply with FCC customer service standards.
- a. Installation, Outage and Service Calls. Each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis: (1) standard Installations will be performed within seven (7) business days after an order has been placed and all other Installations will be performed within a reasonable period of time; (2) Excluding conditions beyond the control of Grantee which prevent performance, Grantee will begin working on Service Interruptions promptly, and in no event later than twenty-four (24) hours after the interruption becomes known, and Subscriber requests for repairs shall be performed by the end of the next business day after the request is received; (3) The “appointment window” alternatives for Installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The Grantee may schedule service calls and other installation activities outside of normal business hours for the convenience of the customer; (4) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment; (5) If a representative of Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time that is convenient for the customer.
- b. Complaint and Other Service Records Upon request by the City, Grantee shall prepare written records of all written complaints received and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide the City with a written summary of such complaints and their resolution and in a form mutually agreeable to City and Grantee.
- c. Billing and Subscriber Communications. Grantee must give Subscribers thirty (30) days advance written notice with copy to City before any changes in rates, programming services, or channel positions.
- d. Subscriber Contracts. Grantee shall file with the City any standard form Subscriber contract utilized by Grantee.
- e. Refunds and Credits. In the event a Subscriber established or terminates Service and receives less than a full month’s Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing.

- f. Additional Customer Service Requirements. The City expressly reserves authority to adopt additional or modified customer service requirements to address Subscriber concerns or complaints in accordance with law.

SECTION 6.

ACCESS CHANNEL(S) PROVISIONS

1. Public, Educational and Government Access.
 - a. Grantee shall dedicate one (1), six (6) MHz channel for public, educational and City or other governmental use (PEG access) and shall activate the PEG access channel upon request from the City. All Subscribers who receive Service on the System shall receive the PEG access channel at no extra charge.
 - b. The City or its designee is authorized to operate, administer, promote, and manage PEG access. Grantee shall have only such responsibility for PEG as is expressly stated in this Section 6. The City may use the PEG access channel to cablecast character generated or other video programming at any time. The City may also make the access channel available for use by the public and local educational authorities.
 - c. Nothing herein shall diminish the City's rights pursuant to Minn. Stat. § 238.084, incorporated herein by reference, to obtain additional channels. The City shall provide ninety (90) days prior written notice to Grantee of City's request for an additional access channel.
2. Charges for Use. If the City elects to make the PEG access channel available to the public, channel time and playback of programming on the channel will be provided without charge.
3. Access Equipment. In the event the City determines to begin cablecasting City Council meetings or other public meetings/events on the dedicated PEG access channel, the Grantee shall reimburse the City's actual costs of purchasing a camera or other equipment necessary to record and cablecast such meetings up to a total of \$1,500.00.
4. Cable Service to Public Buildings. Grantee shall provide without charge, Installation of one (1) two-way activated cable Drop, one (1) cable outlet, and monthly Cable Service without charge to the City Hall and one other public or educational institution as the City designates. No redistribution of the free Service provided pursuant to this Section shall be allowed without the Grantee's prior written consent.

SECTION 7.

OPERATION AND ADMINISTRATION PROVISIONS

1. Franchise Fee.

- a. The City may require Grantee to pay a Franchise Fee of up to five percent (5%) of its annual Gross Revenues to the City. Within 60 days of notice from City, Grantee shall begin collecting and paying such Franchise Fee.
 - b. Payments shall be payable annually. Payments shall be made within sixty (60) days of the end of each of each calendar year together with a report in form reasonably acceptable to City that shows the basis for the computation. All amounts paid shall be subject to audit and recomputation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.
2. Access to Records. The City shall have the right to inspect any records maintained by Grantee which relate to this Franchise or System operations including specifically Grantee's accounting and financial records, subject to the privacy provisions of 47 U.S.C. § 521 et seq. Grantee shall provide copies of any such records upon request by City.
3. Confidential Information. Grantee may choose to provide any confidential books and records that it is obligated to make available to the City pursuant to this Franchise, by allowing the city, or its designated representative(s), to view the books and records at a mutually agreeable location and without City obtaining its own copies of such books and records. Alternatively, Confidential or proprietary information may be disclosed pursuant to a reasonable mutually agreeable non-disclosure agreement. The intent of the parties is to work cooperatively to insure that all books and records reasonably necessary for City's monitoring and enforcement of Franchise obligations are provided to City. To the extent that Grantee does provide books or records directly to the City, City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by Applicable Law. Grantee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary.
4. Reports and Maps to be Filed with the City. In addition to the reports specifically required by the terms of this Franchise, Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such other reports with respect to the operations, affairs, transactions or property, as they relate to the System, which City may reasonably request.

SECTION 8.

GENERAL FINANCIAL, INSURANCE AND SECURITY PROVISIONS

1. Performance Bond.
 - a. If the City so requests, and at all times thereafter until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a bond to the City, in favor of the City, in the amount of Ten Thousand Dollars (\$10,000.00) in a form and with such sureties as are reasonably acceptable to

the City. This bond will be conditioned upon the faithful performance of the Grantee according to the terms of the Franchise and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance, regulation, or the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the System. The City may, from year to year, in its sole discretion, reduce the amount of the bond.

- b. In the event this Franchise is canceled by reason of default of Grantee or revoked, the City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by the City pursuant to said default or revocation. Grantee, however, shall be entitled to the return of such performance bond, or portion thereof, as remains at the expiration of the term of the Franchise.
- c. The rights reserved to the City with respect to the performance bond shall not be deemed an exclusive remedy and are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have. The amount of the bond shall not in any way limit the extent of Grantee's liability to City.

2. Indemnification.

- a. The City and its officers, boards, committees, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System or as to any other action or event with respect to this Franchise except any claims related to PEG access.
- b. Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, elected officials, employees and agents from and against all liability, damages, and penalties which they may legally be required to pay as a result of the actions or omissions of the Grantee operating under this Franchise except any claims related to PEG access.
- c. Nothing in this Franchise relieves a Person, except the City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Right-of-Way or public place or with the

construction or reconstruction of a sewer or water system.

3. Insurance.

- a. Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcaster's/cablecaster's liability and contractual liability coverage, in protection of the Grantee, and the City, its officers, boards, committees, elected officials, employees and agents for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City as an additional insured, and in their capacity as such, the City officers, boards, committees, elected officials, employees and agents.
- b. The policies of insurance shall be in the sum of not less than One Million Dollars (\$1,000,000.00) for personal injury or death of any one Person, and Two Million Dollars (\$2,000,000.00) for personal injury or death of two or more Persons in any one occurrence, One Million Dollars (\$1,000,000.00) for property damage to any one person and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one act or occurrence.
- c. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the City.

SECTION 9.

SALE, ABANDONMENT, AND TRANSFER OF FRANCHISE

1. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City.
2. Removal After Abandonment, Termination or Forfeiture. In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within the City.
3. Sale or Transfer of Franchise.
 - a. No sale, transfer, or fundamental corporate change of or in Grantee, or which creates a new controlling interest in Grantee, including, but not limited to, the sale of a majority of Grantee's assets, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until the parties to the sale, transfer, or corporate change file a written request with the City for its approval and such approval is granted by the City, provided, however, that

said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

- b. Any sale, transfer, exchange or assignment of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 9.03. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- c. The City shall have such time as is permitted by applicable law in which to review a transfer request, but in no event less than one hundred and twenty (120) days.
- d. The Grantee shall reimburse City for all the reasonable legal, administrative, and consulting costs and fees associated with the City’s review of any request to transfer. Such reimbursement of City’s costs and fees shall not constitute a Franchise Fee. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Any fees paid will be assessed against the Franchise Fee.
- e. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to Subparagraph (a) or (b) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City.
- f. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this Section, the City shall have the right of first refusal of any bona fide offer to purchase the System. A complete copy of any written offer to purchase the system must be conveyed to the City along with the Grantee’s written acceptance of the offer contingent upon the rights of the City provided for in this Section.

The City shall be deemed to have waived its rights under this Section in the following circumstances:

- i. If it does not indicate to Grantee in writing, within thirty (30) days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or
- ii. It approves the assignment or sale of the Franchise as provided within this Section.

SECTION 10.

REVOCAION OF FRANCHISE

1. City’s Right to Revoke. In addition to all other rights which the City has pursuant to

law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined that Grantee has violated any material provision of this Franchise, has made intentional misrepresentations to City, or has practiced fraud or deceit upon the City of a Subscriber. The City may revoke this Franchise immediately if Grantee is adjudged bankrupt.

2. Procedures.

- a. The City shall provide Grantee with written notice of the cause for revocation and its intent to revoke and shall allow Grantee sixty (60) days to cure the violation.
- b. Grantee shall be provided the right to a public hearing affording due process prior to revocation, which public hearing shall follow the cure period. The City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- c. After such public hearing and release of written findings, the City may revoke the Franchise. Grantee may appeal such revocation to a court or agency of competent jurisdiction.
- d. During the appeal period, Grantee may continue to operate the System pursuant to the terms and conditions of the Franchise, unless the term thereof sooner expires.

SECTION 11.

PROTECTION OF INDIVIDUAL RIGHTS

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

2. Subscriber Privacy.

- a. Grantee shall comply with the subscriber privacy-related requirements of 47 U.S.C. § 551. No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. 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 and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. 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.

SECTION 12.

MISCELLANEOUS PROVISIONS

- 1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations.
- 2. Compliance with Federal, State and Local Laws.
 - a. Grantee and the City 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.
- 3. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. The City and the Grantee may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the

City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

4. Rights Cumulative. All rights and remedies under this Franchise or retained by the City herein are not exclusive but are in addition to other rights and remedies available to the City. The exercise of remedies herein does not constitute the waiver of any other remedies.
5. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that the terms and conditions of this Franchise are consistent with current law and are not unreasonable or arbitrary.

SECTION 13.

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Acceptance. Grantee shall accept this Franchise within sixty (60) of its enactment by the City, unless the time for acceptance is extended by the City. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein. Grantee shall accept this Franchise by properly executing, acknowledging, and returning the Franchise to the City, and by delivering the performance bond and certificate of insurance required herein.
2. Publication: Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall be the date of acceptance by Grantee.

PASSED AND ADOPTED this 7th day of August, 2012:

CITY OF NEW GERMANY, MINNESOTA

Mayor, Jason Kamerud

ATTEST: _____
City Clerk, Joan Guthmiller

ACCEPTANCE

This Franchise is hereby agreed to and accepted.

NEW ULM TELECOM, INC.

By: _____

Its: _____

NOTARY PUBLIC