

Claremont City Code – Chapter Thirteen
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Chapter 13: Private Utilities

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**SEC. 13.05. COMMUNICATIONS FRANCHISE AGREEMENT
BETWEEN THE CITY OF CLAREMONT, MINNESOTA
AND JAGUAR COMMUNICATIONS (NORTH AMERICAN
COMMUNICATIONS CORPORATION)**

Sub. 1. Title and Definitions

- A. Title. This Franchise shall be known and cited as the Jaguar Communications Franchise.
- B. 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 word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.
1. “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. § 453(b)(7).
 2. “Communication System”, “Cable System” or “System” means a system of antennas, cables, wires, lines, towers, waveguides, fiber or other conductors, converters, equipment or facilities located in the Franchise Area and designed and constructed primarily for the purpose of producing, receiving, transmitting, amplifying or distributing video programming. System as defined herein shall be inconsistent with the definitions set forth in Minn. Stat. § 238.02, subd. 3 and 47 U.S.C. § 522(7).
 3. “Cable Programming Service” means any video programming regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:
 - a. Basic Cable Service;
 - b. Video programming offered on a pay-per-channel or pay-per-program basis; or
 - c. A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service consists of commonly-identified video programming and is not bundled with any regulated tier of service. Cable Programming Service as define herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543 (1)(2) and C.F.R. § 76.901 (b).

4. "Cable Service" means: the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and; subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
5. "Channel" means a single full motion video channel.
6. "City" means the City of Claremont, Minnesota.
7. "Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
8. "Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable. This term only applies to Grantee's delivery of Cable Service.
9. "Effective Competition" means the provision of Cable Service by two (2) or more franchised providers operating pursuant to franchise in the City.
10. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
11. "Franchise", "Cable Franchise", and "Communications Franchise" means this ordinance and the contractual relationship established hereby.
12. "Franchise Fee" means the fee or assessment imposed by the City on a Grantee solely because of its status as a recipient of a Cable Franchise. The term "Franchise Fee" does not include: (i) any tax, fee or assessment of general applicability; (ii) capital costs which are required by this Franchise related to the provision of public, educational or governmental access facilities; (iii) requirements or charges incidental to awarding or enforcing this Franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages, or other regulatory costs specifically required herein in addition to the Franchise Fee; (iv) any fee imposed under Title 17 of the United States Code.
13. "Grantee" is Jaguar Communications, its agents and employees, lawful successors, transferees or assignees.
14. "Gross Revenues" means all revenues received by the Grantee or its affiliates arising from the operation of the Cable System for the provision of Cable Service, including installations, all service tiers, equipment rentals, premium services, pay-per-view (including video-on-demand), wire maintenance, late fees, upgrade and downgrade fees, leased channel fees, converter and equipment rentals. The term Gross Revenue shall not include bad debt (unless collected), revenues from phone or data communications, 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.

15. "Installation" means the connection from feeder cable to the point of connection with the Subscriber Converter. This term only applies to Grantee's delivery of Cable Service.
16. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week and/or some weekend hours.
17. "Normal Operating Conditions" means those service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the System.
18. "PEG Access" means public, educational, governmental and other public interest programming channels, equipment, facilities, funding or operations as the context may require.
19. "Pay Television" means the delivery of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
20. "Person" is any person, firm, partnership, association, corporation, company or other legal entity.
21. "Right-of-Way" or "Rights-of-Way" means the area on, below or above any real property in the Franchise Area in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or property owned by or under the control of the City, including other dedicated Rights-of-Way for travel purposes and utility easements.
22. "Right-of-Way Ordinance" means the ordinance adopted by the City creating requirements regarding regulation, management and use of Rights-of-Way, including registration and permitting requirements.
23. "Standard Installation" means any residential installation which can be completed using a Drop of 150 feet or less. This term only applies to Grantee's delivery of Cable Service.
24. "Subscriber" means any Person who lawfully receives Communication Service from Grantee or over Grantee's network.

Subd. 2. Grant of Authority and General Provisions

- A. Grant of Franchise.
1. This Franchise is granted pursuant to the terms and conditions contained herein.
 2. The Grantee shall have the right and privilege pursuant to this Franchise to provide Communication Service in the City.
 3. Use of Rights-of-Way to provide Cable Service shall not be inconsistent with the terms and conditions by which such Rights-of-Way were created or dedicated and is subject to all legal requirements related to the use of such Rights-of-Way, including the terms and conditions of the Right-of-Way Ordinance.
 4. This Franchise shall be nonexclusive. Additional Cable Franchises and Communications Franchises may be granted by the City.
- B. Lease or Assignment Prohibited. Other than for the provision of commercial leased access and/or provision of access over an open video system, no Person may lease Grantee's network for the purpose of providing Communication Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9(E).
- C. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee. Notwithstanding, this Franchise shall be subject to periodic evaluation not less than every five (5) years as provided in Section 7(F) herein.
- D. Compliance with Applicable Laws, Resolutions and Ordinances. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of any System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, local ordinance-making authority, and eminent domain rights of the City.
- E. Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. In the event of annexation by City or as development occurs, any new territory shall become part of the territory for which this Franchise is granted. In addition, the City and Grantee acknowledge that as of the effective date of this Franchise, the Grantee intends to provide service to the entire Franchise Area.
- F. 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 Grantor: City of Claremont
235 W Front Street
Claremont, Minnesota 55060

If to Grantee: Jaguar Communications Inc.
Donny Smith
Chairman and CEO
213 South Oak Avenue
Owatonna, MN 55060

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

Subd. 3. Construction Standards

A. Registration, Permits and Construction Codes.

1. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the facilities used to provide Communication Service in the City Franchise Area.
2. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and pursuant to Section 4(F) below, 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.
3. Nothing in this Franchise shall be construed to prevent the City from adopting and enforcing a Rights-of-way Ordinance.

B. Grantee shall bury all Drops in a reasonable time period, which shall not exceed fifteen (15) business days, subject to weather conditions. In the event the ground is frozen, Grantee shall be permitted to delay burial until the ground is suitable for burial.

C. Safety Requirements.

1. 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.
2. The Grantee shall install and maintain its equipment and facilities in accordance with all federal, state and local laws and regulations, and the requirements of the National Electric Safety Code 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.

3. All facilities structures, and lines, equipment and connections in, over, under and upon the Rights-of-way, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of the City or any Person.

Subd. 4. Cable System Design and Extension Provisions

A. Channel Capacity.

1. Grantee shall develop, construct and engineer, and activate and provide for the term of this Franchise a network which is capable of delivering a minimum of 50 video channels.
2. All programming decisions remain the discretion of Grantee; provided, however, that any change in the broad categories of video programming or other information services shall require the approval of the City consistent with 47 U.S.C. § 544(b), and further provided that Grantee notifies the City and Subscribers in writing prior to any channel additions, deletions, or realignments, in a manner consistent with federal law.

B. Service Availability/Density Requirement.

1. Grantee shall be required to extend Service to all dwelling units in the City where there are twenty-five (25) dwelling units or more per cable mile. Grantee shall not impose a special or individualized charge for the cost of such extension of Cable Service.
2. Grantee shall also extend Service to Persons requesting Service where the density is insufficient to require extension without any special or individualized charge. In such case, Grantee shall extend service at a cost not to exceed the construction costs per mile multiplied by a fraction whose numerator equals the actual number of dwelling units per mile, and whose denominator equals twenty-five (25). Those Persons requesting Service will bear the remainder of the construction costs on a pro rata basis. The Grantee may require that the payment of these costs by such potential Subscribers be made in advance. Access to Cable 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. Grantee shall be given 24 months, weather permitting, to construct and activate Cable Service to annexed or newly developed areas.

- C. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications. In such case, Grantee may charge for the

incremental increase in material and labor costs incurred beyond the Standard Installation.

- D. Provision of Services. The Grantee shall render effective Service, make repairs promptly, and interrupt Service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice to the City and Subscribers and shall occur during periods of minimum use of the Services, as determined by records of the Grantee.
- E. Technical Standards. The technical standards used in the provision of Cable Service 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. Any failure to comply with the FCC technical standards shall be a violation of this Franchise.
- F. Performance Review and System Testing. In the event City finds that there are signal or System performance difficulties which may constitute violations of applicable FCC technical standards and this Franchise, Grantee shall be notified and afforded ten (10) days to correct problems or complaints. If the performance difficulty is not resolved after the cure period has elapsed in City's sole determination, City may require Grantee to demonstrate compliance via testing or other means selected by the Grantee.
- G. FCC Reports. Grantee shall file with City all required FCC technical reports which demonstrate the level of System performance and signal quality. Further, Grantee shall summarize and explain the results of any such testing provided to the City.

Subd. 5. Services Provisions

- A. Enforcement of Customer Service Standards. The City intends to stay enforcement of this Section 5 to the extent Effective Competition exists. Notwithstanding, the City may initiate enforcement of this Section despite the existence of Effective Competition based on the City's receipt of at least five (5) complaints with respect to each competitor, concerning similar customer service matters. The City may initiate enforcement of this Section by Resolution of the City Council. The City may begin enforcement three (3) days after mailing a copy of such Resolution to Grantee. The Resolution shall indicate the basis for initiating enforcement.
- B. Regulation of Service Rates.
 - 1. The City may regulate rates for the provision of Cable Service to the extent allowed under federal or state law(s).
 - 2. A list of Grantee's current residential Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee shall give the City and Subscribers written notice of any change in a rate or charge in accordance with any applicable FCC requirements unless such

change arises from changes in regulatory fees, franchise fees, access costs, or franchise imposed costs.

- C. 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.
- D. Telephone Inquiries and Complaints.
1. Availability Grantee will maintain local, toll-free or collect call telephone access lines which will be available to its Subscribers 24 hours a day, seven days a week. During Normal Business Hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries. Grantee will ensure that: (1) an adequate number of trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours, and; (2) after Normal Business Hours, the access line will be answered by a trained company representative or a service or an automated response system such as an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.
 2. Telephone Answer Time and Busy Signals. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. 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 under Normal Operating Conditions, measured on a quarterly basis. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.
- E. Installation, Outage and Service Calls. Under Normal Operating Conditions which will exclude the initial deployment period, each of the following standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis: (1) Excluding conditions beyond the control of Grantee which prevent performance, Grantee will begin working on service interruptions promptly, and in no event later than twenty-four (24) hours after the interruption becomes known, and Grantee must begin actions to correct other service problems the next business day after notification of the service problem and resolve such problems as soon as is reasonably possible; (2) The "appointment window" alternatives for Installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the convenience of the customer; (3) Grantee must contact a customer to cancel a scheduled appointment; (4) If a representative of Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted and the appointment will be rescheduled if necessary.

- F. **Complaint and Other Service Records.** Subject to Grantee's obligation to maintain the privacy of certain information, Grantee shall prepare and maintain written records of all complaints received and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide the City with a written summary of such complaints and their resolution on an annual basis and in a form mutually agreeable to City and Grantee. Grantee may be required to provide detailed compliance reports on an annual basis with respect to the objectively measurable service standards herein upon written demand by the City.
- G. **Subscriber Contracts.** Grantee shall provide to City upon request any standard form Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall provide a document completely and concisely stating the length and terms of the Subscriber contract offered to customers.
- H. **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. Bills must be clear, concise, and understandable, with itemization including but not limited to, basic and premium charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.
- I. **Refunds and Credits.** If Service is interrupted or discontinued for 24 or more consecutive hours and Grantee has notice of such interruption, Subscribers shall be credited pro rata for such interruption beginning with the date of notice of interruption. Credits for will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. In the event a Subscriber establishes or terminates Service and receives less than a full month's Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than the return of the equipment supplied by the Grantee if Service is terminated. Grantee shall not be held responsible for interruptions in programming caused by content providers.
- J. **Late Fees.** Fees for the late payment of bills shall not accrue until the normal billing cut-off for the next month's service approximately one (1) month after the unpaid bill in question was sent to the Subscriber.
- K. **Additional Customer Service Requirements.** The City expressly reserves authority to adopt additional or modified customer service requirements to address subscriber concerns or complaints in accordance with federal law.
- L. **Violations.** Any violation of these requirements after enforcement of this Section is initiated by Council Resolution shall be deemed a violation of this Franchise.

Subd. 6. Operation and Administration Provisions

- A. Administration of Franchise. The City or its designee shall have continuing regulatory jurisdiction and supervision over the Services described herein and the Grantee's operation under the Franchise.
- B. Delegated Authority. The City shall have authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. The City may withdraw or re-delegate such authority by giving Grantee written notice. Grantee shall cooperate with any such delegatee of the City.
- C. Franchise Fee
 - 1. From the effective date of the agreement, Jaguar Communications will pay a franchise fee in the amount of three percent (3%) of video gross revenue to the City of Claremont. The City currently receives payment from incumbent cable franchisee, US Cable, in the amount of three percent 3% of gross revenues. If at expiration or termination of the US Cable agreement, or if the City takes action to increase the Franchise fee charged to US Cable above 3%, Jaguar's franchise fee will be increased to the same percentage.
 - 2. Any payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each of Grantee's current fiscal quarters together with a report in form reasonably acceptable to City and Grantee and which shows the basis for the computation.
 - 3. All amounts paid shall be subject to audit and re-computation 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.
- D. Access to Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, any records maintained by Grantee which relate to this Franchise or System operations including specifically Grantee's revenue records, subject to the privacy provisions of 47 U.S.C. § 521 et seq. Grantee shall be required to provide such requested documents to the City unless such documents are available for inspection at a location in City.
- E. Reports to be filed with the City. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues certified by an officer of the Grantee. Grantee shall prepare and furnish to the City such other reports with respect to the operations, affairs, transactions or property, as they relate to this Franchise or Cable Services as City may request. The form of such reports shall be mutually agreed upon by City and Grantee.
- F. Periodic Evaluation.

1. The City may require evaluation sessions during the term of this Franchise not more than annually, upon thirty (30) days written notice to Grantee. Grantee and City shall hold evaluation sessions after the fifth and tenth years of this franchise.
2. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies, channel capacity for PEG access programming and any other topics the City and Grantee deem relevant.
3. As a result of a periodic review or evaluation session, the City may request Grantee to amend the Franchise to provide additional services or facilities as are mutually agreed upon and which are both economically and technically feasible taking into consideration the remaining life of the Franchise.

Subd. 7. General Provisions

A. Indemnification of the City.

1. The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with 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.
2. Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise, administration, or enforcement of the Franchise. Grantee's obligations herein shall not include any alleged or actual liability which is based solely on City's operation of PEG access facilities or equipment or the programming provided via such PEG facilities or equipment.
3. 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.
4. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:

- a. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right.
- b. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
- c. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Paragraph 2 above.

B. Insurance.

1. Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for damages which may arise as a result of this Franchise.
2. The policies of insurance shall be in the sum of not less than Five Hundred Thousand Dollars (\$500,000.00) for personal injury or death of any one Person, and One Million Dollars (\$1,000,000.00) for personal injury or death of two or more Persons in any one occurrence, Five Hundred Thousand Dollars (\$500,000.00) for property damage to any one person and One Million Dollars (\$1,000,000.00) for property damage resulting from any one act or occurrence.
3. 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.

Subd. 8. Sale, Abandonment, Transfer and Revocation of Franchise

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

3. Grantee has practiced fraud or deceit upon the City or Subscriber.
4. The City may revoke this Franchise without the hearing required herein if Grantee files for bankruptcy.

B. Procedures for Revocation.

C. Abandonment of Service. Grantee may not discontinue providing video programming services without having first given thirty (30) days written notice to the City.

D. Removal after Abandonment. Termination or Forfeiture.

1. 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, subject to the authority of the Member Municipalities; provided, however, that the Grantee shall not be required to remove the System if it is authorized to provide telecommunications service pursuant to state or federal law.
2. If Grantee has failed to commence removal of System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written notice of the City demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City demand for removal is given, the City shall have the right remove the System at Jaguar's expense or the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547.

E. Sale or Transfer of Franchise.

1. No sale, transfer, or corporate change of or in Grantee or the System, including, but not limited to, the sale of a majority of the entity's assets, a merger including the consolidation of a subsidiary and parent entity, or the creation of a subsidiary or affiliate entity, shall take place until the parties to the sale, transfer, or corporate change file a written request with the City for its approval and such approval is granted by the City, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.
2. Any sale, transfer, exchange or assignment of stock or other equity interest in Grantee so as to create a new controlling interest shall be subject to the requirements of this Section 9(E). The term "controlling interest" as used herein means actual working control in whatever manner exercised.
3. The City shall have such time as is permitted by applicable federal law in which to review a transfer request.

4. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to Subparagraph (1) or (2) 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.
5. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to Subparagraph (1) or (2) of this Section, the City shall have the right to purchase the System infrastructure within its corporate limits. In the event Grantee has received a bona fide offer for purchase of the System, the City shall have the right to purchase in accordance with the terms thereof. The Grantee must promptly convey such offer to the City along with any written acceptance. As used in this Section, "bona fide offer" means an offer to purchase the System received by the Grantee which it intends to accept. In any other event, the City shall have the right to purchase the System infrastructure within its corporate limits for an equitable price and upon commercially reasonable terms.
6. The City shall be deemed to have waived its right to purchase under in the following circumstances:
 - a. If it does not indicate to Grantee in writing, within sixty (60) days of notice of a proposed sale or assignment, its intention to exercise or reserve its right of purchase; or
 - b. It approves the assignment or sale of the Franchise as provided within this Section.

Subd. 9. Protection of Individual Rights

- A. **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.
- B. **Subscriber Privacy.**
 1. 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.

2. 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.
3. 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 (2) of this Subdivision.

Subd. 10. Miscellaneous Provisions

- A. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
- B. Work Performed by Others. All obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other Person performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs services pursuant to this Franchise involving the Right-of-way, public property or new System construction or System upgrade.
- C. Amendment of Franchise Ordinance. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made by the City and Grantee if such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws, provided, however, nothing herein shall restrict the City's exercise of its police powers.
- D. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented due to a cause beyond its control, such failure to perform shall be excused for the period of such inability to perform.
- E. Compliance with Federal, State and Local Laws.

1. 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.
 2. If any term, condition or provision of this Franchise shall, to any extent, be held to be invalid or unenforceable, the remainder and all the terms, provisions and conditions herein shall, in all other respects, continue to be effective 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.
- F. Non-enforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
- G. Rights Cumulative. All rights and remedies given to the City by this Franchise or retained by the City shall be in addition to and not exclusive of any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity.
- H. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

Subd. 11. Publication Effective Date; Acceptance and Exhibits

- A. 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 passage by the Claremont City Council.
- B. Acceptance.
1. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights previously granted to Grantee shall be null and void.
 2. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

3. Grantee shall accept this Franchise in the following manner:
 - a. This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.
 - b. With its acceptance, Grantee shall also deliver any grant payments, and insurance certificates required herein that have not previously been delivered.

SECTION 13.05 ADOPTED BY THE CLAREMONT CITY COUNCIL ON 10-14-2008