

**Appendix B - Cable Franchise**

ORDINANCE NO 161

AN ORDINANCE CREATING AND AWARDING A CABLE COMMUNICATIONS  
FRANCHISE IN THE CITY OF EAGLE BEND AND RULES GOVERNING THE OPERATION  
OF SAME

Section 1 Definitions

- 1) "Board" is the Minnesota Cable Communications Board.
- 2) "Franchisor" is the City of Eagle Bend.
- 3) "Franchises" is Data-Video Systems Inc.
- 4) "FCC" is the Federal Communications Commission of the United States.
- 5) "Class IV Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.
- 6) "Non-Voice return communications" means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.
- 7) The word "shall" is always mandatory.
- 8) The word "may" allows discretion.

Section 2 GRANT OF AUTHORITY

The City Council of Eagle Bend ordains that a cable communications franchise for the installation, operation, and maintenance of a cable communications system within the city of Eagle Bend is granted to Data-Video Systems Inc. provided, however, that said franchise shall be subject to the following terms and performance conditions.

Section 3 COMPLIANCE WITH MINNESOTA CABLE COMMUNICATIONS  
BOARD'S FRANCHISE STANDARDS

This franchise shall at all times be in compliance with the rules of the Minnesota Cable Communications Board.

**Section 4 COMPLIANCE WITH STATE AND FEDERAL LAWS**

The franchises and franchising authority shall conform to all state laws and rules regarding cable communications not later than one (1) year after they become effective unless otherwise stated and to all federal laws and regulations regarding cable as they become effective.

**Section 5 CERTIFICATE OF CONFIRMATION**

The franchise shall cease to be of any force and effect if the franchise fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the Board, provided, however, that the franchises may operate his cable communication system while the Board is considering the application for renewal of his certificate of confirmation.

**Section 6 FRANCHISE TERMS**

This franchise shall have an initial franchise term of 10 years and a renewal term of 15 years.

**Section 7 RENEGOTIATION OF FRANCHISE TERMS**

Renegotiation between the franchisor and the franchisee shall occur 1 year before the end of the franchise term unless the franchising authority determines not to reissue the franchise to the franchises or desires to consider additional applicants for franchise.

**Section 8 FRANCHISE EXCLUSIVELY**

This franchise agreement is non-exclusive.

**Section 9 SALE OR TRANSFER OF THE FRANCHISE, SALE OR TRANSFER.**

Sale of transfer of this franchise or sale or transfer of stock so as to create a new controlling interest is prohibited except at the approval of the franchising authority which approval shall not be unreasonably withheld, and that sale of transfer is completed pursuant to Minnesota Cable Communications Board rules, Chapter 12.

**Section 10 RATES AND RATE CHANGE PROCEDURE, SUBSCRIBER RATES**

All rates and charges exacted by the company shall be fair, reasonable, and just. The set of rates shall be set out here at schedule A which may be changed from time to time. The franchises shall notify the city in the event it requests a rate change. The city shall have 30 days to approve or disapprove the rate change by resolution.

**Section 11 FRANCHISE ADMINISTRATOR**

The City Clerk of the City of Eagle Bend shall be responsible for the continuing administration of this franchise.

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**Section 12 LIABILITY INSURANCE**

The franchisee shall indemnify and hold harmless the franchising authority at all times during the term of the franchise and shall maintain throughout the term of the franchise, liability insurance in the amount of:

Two Hundred Fifty Thousand Dollars (\$250,000.00) Combined Single Limit.

Said liability insurance shall insure both the franchising authority and the franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the franchise.

**Section 13 PERFORMANCE BOND**

At the time this franchise becomes effective, the franchisee shall furnish a performance bond, certificate of deposit or any other type of instrument approved by the franchising authority in the amount of \$1,000.00. This amount is deemed by the franchising authority to be adequate compensation for damages resulting from the franchisee's non-performance. The franchising authority shall drop bond after construction is complete.

**Section 14 LIABILITY FOR INJURY TO FRANCHISEE'S FACILITIES**

Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

**Section 15 PUBLIC HEARING RE: FRANCHISEE'S CREDENTIALS**

The franchisee's technical ability, financial condition and legal qualification were considered and approved by the franchising authority in a full public hearing proceeding affording reasonable notice and a reasonable opportunity to be heard.

**Section 16 CHANNEL CAPACITY**

The franchisee shall construct a cable system with a channel capacity available for immediate or potential use, equal to a minimum of 72 MHz of bandwidth (the equivalent of 12 television broadcast channels).

**Section 17 AUTHORIZATION TO COMMENCE CONSTRUCTION**

The franchisee shall obtain a permit from the proper municipal authority before commencing construction of any communications system, including the opening of any street, sidewalk, driveway or public place. If the franchisee fails to meet the conditions of the permit, the franchisor shall have the authority to charge the franchisee for failure to comply with any provisions of the permit.





**Section 18 COMPLIANCE WITH APPLICABLE CODES**

All wires, conduits, cable and other property and facilities of the franchisee shall be located, constructed, installed, and maintained in compliance with applicable codes. The franchisee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

**Section 19 RELOCATION OF WIRES, ETC.**

The following procedure shall be used by the franchisee and franchising authority for the relocation or removal of the franchisee's wires, conduits, cables and other property located in said street, right-of-way or public place whenever the franchising authority undertakes public improvements which affect the cable equipment. The franchisor shall notify the franchisee at least 30 days prior to any improvements or changes at which time the franchises shall expeditiously make any changes which are necessary.

**Section 20 TECHNICAL STANDARDS**

The rules of the Federal Communications Commission relating to cable communications systems contained in sub-part K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems are incorporated by reference.

**Section 21 SPECIAL TESTING**

In the event that special testing is required to determine the source of technical difficulties, the franchisee shall bear the expense of such testing unless deemed not to be franchisee's fault.

**Section 22 SUBSCRIBER PRIVACY**

No signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for the purpose of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall 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 revokable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type of classification of Class IV cable communications activity planned for the purpose.

Subd. 1 No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers shall be sold or

otherwise made available to any party other than to the company and its employees for internal business use, and also the subscriber subject to that information, unless the company has received specific written authorization from the subscriber to make such data available.

Subd. 2 Written permission from the subscriber shall not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in 4 MCAR 4 202 W 1.

### Section 23 Subscriber Complaints

All complaints by the franchisor, subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the cable communications system shall be investigated by the franchisee. In the event the franchisee fails to investigate and resolve a subscriber complaint, the subscriber may submit the complaint in writing to the franchisor. The franchises shall have 30 days to resolve the complaint and report back to the franchisor.

### Section 24 REPAIRS AND COMPLAINTS

The franchisee shall provide at least a toll-free or collect telephone number for the reception of subscriber complaints and shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. Costs included in making repairs, adjustments and installations shall be borne by the franchisee, unless otherwise provided for in the franchise.

### Section 25 TERMINATION

The franchising authority shall have the right to terminate and cancel the franchise and all rights and privileges of the franchise in the event that the franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the franchising authority. The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchise a minimum of 30 days subsequent to receipt of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee shall have a period of 30 days, beginning the day following the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal with the Board, pursuant to Minn. Stat. 238.14. During such 30 day period and until the Board determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof sooner expires. If the Board approves of the action of the municipality, the

franchise shall terminate immediately, if the Board disapproves of the action of the municipality, the franchise shall remain in full force and effect during the term thereof unless sooner terminated in accordance with law or these Rules. Any such appeal to the Board is a contested case to which the Board is not a party.

#### Section 26 ABANDONMENT

The franchisee may not abandon any portion of the cable communications service provided hereunder without having given 3 months prior written notice to the franchising authority and the Board. No cable communications company may abandon any cable communications service or any portion thereof without compensating the franchising authority for damages resulting to it from such abandonment.

#### Section 27 REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE

Upon termination or forfeiture of this franchise, the franchisee shall remove its cable, wires, and appliances from the streets, alleys and other public places within the franchise area if the franchising authority so requests. If the franchisee fails to remove its cables, wires, and appliances, the franchisor may do so and subsequently charge the franchisee for such removal.

#### Section 28 MUNICIPAL RIGHT TO PURCHASE SYSTEM

If the franchise or cable system is offered for sale, the franchising authority shall have the right to purchase the system, at the amount equal to that offered by another Company or individual.

#### Section 29 ACCESS CHANNELS

Subd. 1 The franchisee shall provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on at least one specially designated access channel. Franchisee's providing subscribers only alarm services or only data transmission services for computer operated functions shall be exempt from this requirement. The specially designated access channel may be used by local educational authorities and local government on a first come, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government, the franchises shall lease time to commercial or noncommercial users on a first come, nondiscriminatory basis if the demand for such time arises. The franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by local educational authorities, local government, or commercial or non-commercial users who have leased time on the specially designated access channel. The VHF spectrum shall be used for the specially designated access channel required in this subdivision.

Subd. 2 The franchisee shall establish rules pertaining to the administration of the specially designated access channel. The operating rules if established by the franchisee governing the specially designated access channel shall be filed with the Minnesota Cable Communications Board within 90 days after any such channels are put into use.

Any request for service in the line extension area shall be served in six months or less after construction of the initial service territory is completed.

Section 30 CONSTRUCTION SCHEDULE

Within 90 days of the granting of the franchise, the franchisee shall apply for all necessary permits, licenses, certificates and authorizations, that energized trunk cable shall be extended substantially throughout the authorized area within one year after receipt of all necessary governmental permits, licenses, certifications and authorizations, and that persons along the route of the energized cable will have individual 'drops' as desired during the period of time, the requirement of this provision may be waived by the franchising authority only upon occurrence of unforeseen events or acts of God.

Section 31 LINE EXTENSION POLICY.

We will serve all of the City limits of the City of Eagle Bend, Minnesota to subscribers requesting service at no charge during construction. After construction a \$30.00 hookup charge will be in effect. After Construction outside the city limits, subscribers electing to receive cable under the extension plan will be eligible for a pro rata refund depending on the number of additional subscribers taking service. To each extension area the installation cost will be \$30.00 hookup fee plus time and material.

Section 32 NON-VOICE RETURN CAPABILITY.

The franchisee shall provide a cable communications system having the technical capacity of non-voice return.

Section 33 FRANCHISE FEE

Franchise fee of 3% of basic charge (3% of gross basic charges). Payable once a year, due January 30 for all of January 1 to December 31 of preceding year.

Section 34 SEE SCHEDULE A AND B ATTACHED.

**SCHEDULE A (RATES)**

**DATAVIDEO SYSTEMS INC.**

The following basic package will be offered;      \$9.50 monthly fee

Channel	2	KCMT	CBS
	3	NBC	
	4	ABC	
	5	CNN	All news
	6	ESPN	24 hour sports
	7	Nickel	Children channel
	8	WGN	Chicago Independent
	9	WRBS	Atlanta Independent
	10	KFEP	Minneapolis Independent
	11	Local Origin Time and Temp	
	12	FBS	Educational
	13	CBN	Religious

Channel H MID BAND HBO (pay tv) additional \$ 9.50 monthly fee

All BAND FM additional \$1.00 monthly fee

Additional Hook-up, per set, per month \$1.00

All prewired co-ax homes that meet standard can be used.

Eleven (11) months paid in advance will insure twelve (12) months service.

Apartment complexes:

One-half price on the basic charge if all apartments are hooked up and the apartment owner assumes full responsibility for the bill.

Two free basic hook-ups for use by the City of Eagle Bend.

Installation Charge in City limits \$30.00 ( No installation charge will be made during construction period)

It will be necessary that the franchise include an easement on the city right-of-way, water tower (for antennas) and space for a small building.

**SCHEDULE B**

The following is support information:

1. Local Access
2. Time and Temperature
3. HBO on the Mid-Band (Less chance of accidental reception)
4. Underground System
  - a. less weather related problems
  - b. improves appearance of the City
  - c. temperature changes do not effect underground plant as drastically as aerial plant.
5. Publish local program guide
6. Will not compete against local firms selling television
7. 35 Channel Capability
8. 2-way compatibility
9. Own all necessary construction equipment  
Will bury existing telephone cable drops and TV cable in same trench wherever possible.
10. Trained personnel available for maintenance and installation on daily basis
11. Latest State of the Art equipment  
Consultant and factory engineer available to insure proper installation
12. No payments until system is completed and working
13. Franchise fee of 3% of basic charge (3% of gross basic charges)  
Approximate \$500.00 per year or \$7,500.00 for 15 year franchise

System to be turned up within one year of receiving franchise.

(Baring unfavorable weather conditions, our work schedule would allow us to complete the installation in late spring.)

ORDINANCE NO. 08-05-19-02

AN ORDINANCE GRANTING TO TEKSTAR COMMUNICATIONS, INC. DBA ARVIG COMMUNICATION SYSTEMS, PERMISSION TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM UPON, ALONG, ACROSS, OVER, AND UNDER THE STREETS AND PUBLIC RIGHTS OF WAY OF THE CITY OF EAGLE BEND, MINNESOTA.

WHEREAS, the City of Eagle Bend ("Grantor") desires to make available to its residents a cable system subject to certain terms and conditions Grantor deems necessary and appropriate; and

WHEREAS, Tekstar Communications, Inc., dba Arvig Communication Systems, ("Grantee") desires to continue to construct, install and maintain a cable system within the jurisdictional limits of the Grantor.

NOW, THEREFORE, the City Council of Eagle Bend, Minnesota, ordains:

Findings

- A. Grantee's technical and service abilities, qualifications, and character were considered and approved by public proceeding following due notice and opportunity to be heard by all parties.
- B. Grantee's plans for construction, upgrade, and operation of the System were considered and found reasonable.
- C. The Franchise granted to Grantee by Grantor complies with applicable law.
- D. The Franchise is non-exclusive.

Section 1. Definitions

1.1. Definitions. For the purposes of the Ordinance, the following terms and words shall have the meanings set forth below:

- a. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.
- b. "Basic Service" means those audio and visual signals carried on the service tier of the Cable System which includes local off-air television signals. Basic Service shall not include any other tier of service or any premium or pay-per-view channels or services.



- c. "Cable Act" means the Cable Communications Policy Act of 1984, as amended.
- d. "Cable Service" means (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 of such Video Programming or any other lawful communication service.
- e. "Cable System" means a facility or system, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment, that is designed to provide Cable Service or other service to Subscribers.
- f. "Franchise" shall mean the initial authorization, or renewal thereof, issued by Grantor, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to Subscribers.
- g. "Grantee" means Tekstar Communications, Inc., dba Arvig Communication Systems, or the lawful successor, transferee or assignee thereof, to include its agents, employees, and other authorized representatives.
- h. "Grantor" refers to the City of Eagle Bend, Minnesota, including its agents, employees and other authorized representatives.
- i. "Gross Revenue" means any revenue received by the Grantee from the operation of the Cable System to provide Cable Services within the jurisdictional boundaries of the Grantor; provided, however, that such phrase shall not include any taxes, fee or assessment of general applicability collected by the Grantee from Subscribers for passthrough to a government agency, including the FCC User Fee or unrecovered bad debt, fees derived from the lease of channels to providers unaffiliated with Grantee, and any revenues received from national, regional, and local advertising carried on the system.
- j. "Public Way" shall mean the surface of, and the space above and below, and public street, highway, freeway, alley, court, boulevard, sidewalk, parkway, public ways, drive, circle, or other public right-of-way, including, but not limited to, public utility easement, dedicated utility strips, or right-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by Grantor in the Service Area which shall entitle Grantor and Grantee to the use thereof for the purpose of installing, operating, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by Grantor within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include

other easements or right-of-way as shall within their proper use and meaning entitle Grantor and Grantee to the use thereof for the purpose of installing or transmitting Grantee's Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

- k. "Service Area" means the present municipal boundaries of Grantor, and shall include any additions by annexation or other legal means.
- l. "Service Tier" means a category of Cable Service or other services provided by Grantee for which a separate charge is made by Grantee.
- m. "Subscriber" means a person or user of the Cable System who lawfully receives Cable Services or other services therefrom with Grantee's express permission.

## Section 2. Grant of Franchise

2.1 Grant. Grantor hereby grants to Grantee a nonexclusive Franchise which authorizes Grantee, at its own cost, to construct, operate, and maintain a Cable System and offer Cable Service and other services in or along any Public Way within the Service Area.

2.2 Term. The Franchise shall be for a term of 10 years, commencing on the effective date of this Ordinance. Subsequent renewals shall be pursuant to the renewal provisions of the Cable Act.

2.3 Equal Protection. The City will not grant a similar cable franchise for an area included in this franchise on terms and conditions more favorable or less burdensome than those in this franchise pertaining to: (1) area served; (2) public, educational, or governmental access requirements; or (3) franchise fees.

In the event a non-franchise multichannel video-programming distributor provides service to the Service Area, Grantee shall have a right to request franchise amendments that relieve Grantee of burdens which create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend the franchise. Such petition shall:

- 1. Indicate the presence of a non-franchised competitor(s);
- 2. Identify the basis for Grantee's belief that certain provisions of the franchise place Grantee at a competitive disadvantage;
- 3. Identify the burdens to be amended or repealed in order to eliminate the competitive disadvantage.

Grantor shall not unreasonably withhold granting the petition and so amending the Franchise.

2.4 Compliance with Laws and Regulations. The provisions of this Franchise shall be subject to applicable federal, state and local law.

Section 3. Standard of Service

3.1 Construction Standards. All wires, conduits, cable, and other property and facilities of Grantee shall be located, constructed, installed and maintained in compliance with applicable codes. Grantee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the Franchise area or endanger the life or property of any persons.

3.2 Public Way. All transmission and distribution structures, poles, other lines, and equipment installed or erected by Grantee shall be located so as to cause a minimum of interference with the proper use of the Public Way and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Way.

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

3.4 Relocation at Request of Franchising Authority. Upon receipt of reasonable notice, not to be less than five business days, Grantee shall, at its own expense, temporarily disconnect and/or relocate within the Public Way, or remove from the Public Way, any property of Grantee when lawfully required by Grantor 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 structures or improvements by Grantor; but, Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to Grantee.

3.5 Relocation at Request of Third Party. Grantee shall, on the request of any person holding a building moving permit, temporarily raised or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than 10 business days advance written notice to arrange for such temporary wire changes.

3.6 Trimming. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the streets and dedicated easements of Grantor, provided that in the exercise of such right, Grantee shall not, cut, remove, trim or otherwise injure such trees to any greater extent than is necessary for the installation, maintenance and use of the Cable System. Grantee shall reasonably notify City before any scheduled tree trimming or removal services are performed within the Service Area, unless an emergency requires such work without notification.

3.7 Use of Grantee's Equipment. Subject to any applicable law, Grantor shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for Grantee in any Public Way; provided that (a) such use by Grantor does not interfere with a current or future use by Grantee; (b) Grantor holds Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including but not limited to, reasonable attorney's fees and costs; and (c) Grantor may be required either to pay a reasonable rental fee or otherwise reasonably compensate Grantee for the use of such poles, conduits, or equipment; provided, however, that Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement relating to the Service Area.

3.8 Safety Requirement. Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All work shall be performed in accordance with applicable law.

3.9 Aerial and Underground Construction. In those areas of the Service Area where all of the Transmission and distribution facilities of the respective public utilities provided telephone communications and electric services are underground, Grantee shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially and underground. Nothing contained in this section shall require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such placed underground.

3.10 Required Extensions of Service. Grantee shall extend the Cable System to new areas within the Service Area subject to a minimum density requirement of 30 homes per linear mile.

3.11 Public, Educational and Government Access Channel. The Grantee shall provide to each of its Subscribers who receive all, or any part of, the total services offered on the Cable System, reception and any necessary equipment on at least one specifically designated access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis. During those hours that the specifically designated access channel is not being used by the general public, local educational authorities, or local government, the Grantee may use this specifically designated access channel.

3.12 Service to Public Buildings. Grantee shall provide Basic Service and one free outlet to each of the following public facilities located within 125 feet of existing service lines of the Grantee and within the jurisdictional limits of the Grantor: City Hall, Fire Department, Police Department and public schools. No monthly service fee shall be charged for such outlet. Grantee shall provide Basic Service to new construction thereafter for similar public facilities provided they are within 125 feet of the existing service lines of Grantee.

3.13 Emergency Override. In the case of an emergency, Grantee shall, upon request of Grantor, make available its facilities to Grantor to provide emergency information and instructions during the emergency or disaster period. Grantor shall hold Grantee, its agents, employees, officers, and assigns, hereunder, harmless from any claims arising out of the emergency use of its facilities by Grantor, including, but not limited to, reasonable attorney's fees and costs.

#### Section 4. Regulation by Grantor

4.1 Franchise Fee. Grantor reserves the right to implement a franchise fee during the term of this Agreement. In the event Grantor adopts a resolution to implement a franchise fee, Grantee shall pay to Grantor an amount equal to the percentage (to be set by resolution in an amount not to exceed the maximum permitted by law) of gross revenues received from the operation of the Cable Systems on an annual basis. Payments would be made in quarterly increments, such payments to be within 60 days of the end of the quarter.

4.2 Rates and Changes. The City reserves the right to regulate rates for basic service to the extent expressly provided by federal or state law.

4.3 Abandonment. Grantee shall not abandon any portion of its Cable System without giving three months prior written notice to Grantor. Grantee shall compensate Grantor for any damages resulting to it from the abandonment.

4.4 Sale. Except to the extent expressly required by federal or state law, if a renewal or extension of Grantee's franchise is denied or the franchise is lawfully terminated, and

Grantor 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 fair market value, determined on the basis of the Cable System valued as a going concern. If the franchise or cable system is offered for sale, Grantor shall have the right to purchase the system at its fair market value.

Grantee and Grantor agree that in the case of a lawful revocation of the Franchise, at the Grantee's request, which shall be made in its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. Grantor further agrees that during such a period of time, it shall authorize Grantee to continue to operate pursuant to the terms of its prior franchise; however, in no event shall such authorization exceed a period of time greater than six months from the effective date of such revocation. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to Grantor, Grantee and Grantor may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Grantee's continued operation of its Cable System during the six month period shall not be deemed to be a waiver, not an extinguishment of, any rights of either Grantor or the Grantee. Notwithstanding anything to the contrary set forth in this section, neither Grantor nor Grantee shall be required to violate federal or state law.

4.5 Removal of Property. Upon termination of forfeiture of this Franchise, Grantee shall, if so required, remove all of its cables, wires and appliances from the streets, alley, and other public places, with the exception of those portions of said cables, wires and appliances as are then being utilized and operated by Grantee under any other lawful and effective governmental permit or license. IF the same are not so removed, Grantor may cause the same to be removed and recover the reasonable costs thereof from Grantee.

4.6 Transfer. Neither Grantee's right, title or interest in the franchise, nor the Cable System for which it is granted, shall be sold, transferred assigned, or otherwise encumbered, other than to an Affiliate, except with the approval of Grantor, which approval shall not be unreasonably withheld. Such sale or transfer or creation of a new controlling interest shall be completed pursuant to applicable federal and state law. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

## Section 5. Compliance.

5.1 Testing. Grantor may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of Grantee or the Cable System in order to determine whether or not Grantee is in compliance with these terms and applicable law. Except in emergency circumstances, such tests may be undertaken only after given Grantee reasonable notice thereof, not to be

less than five business days, and allowing a representative of Grantee an opportunity to be present during such tests. In the event such testing demonstrates that Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such test shall be borne by the Grantee. In the event such testing demonstrates Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by Grantor. Except in emergency circumstances, Grantor agrees that such testing shall be undertaken no more than one time a year, and the results shall be made available to Grantee.

5.2 Technical Standards. The technical standards promulgated by the FCC related to cable communications systems contained in Subpart K of Part 76 of FCC rules and regulations are herein incorporated by reference.

5.3 Book and Records. Grantee agrees Grantor, upon give days notice, may review such of its book and records, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with these terms. Such records shall include but not be limited to, any public records required to be kept by Grantee pursuant to the rules and regulations of the FCC. Grantee shall file with Grantor annually reports of gross Subscriber revenues and such other information as Grantor reasonably deems necessary for enforcement of the Franchise. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which is reasonably deems to be proprietary or confidential in nature. Grantor agrees to treat any information disclosed by Grantee to it as confidential.

## Section 6. Insurance and Indemnification

6.1 Insurance Requirements. Grantee shall maintain in full force and effect, and its own cost and expense, during the term of the Franchise, insurance as follows:

Five Hundred Thousand Dollars (\$500,000) for property damage in any one occurrence.

One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for general liability insurance.

Worker's compensation coverage in accordance with state law.

Said insurance shall designate Grantor and its employees as an additional insured. Grantor shall be notified by the insurance company at least 30 days prior to the expiration or cancellation of such insurance policy or policies.

6.2 Indemnification. Grantee hereby agrees to indemnify and hold Grantor, including its agents and employees, harmless for any claims or damages resulting from the actions of Grantee in constructions, operating and maintaining the Cable System. Grantor agrees to give Grantee written notice of its obligation to indemnify Grantor within 10 days of receipt

of a claim or action pursuant to this section. Notwithstanding the foregoing, or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

Section 7. End of Franchise

7.1 Expiration. Unless earlier terminated in accordance with this Ordinance, the Franchise shall expire 10 years after the effective date of this Ordinance.

7.2 Noncompliance. Prior to revocation or termination of the Franchise, Grantor shall give written notice to Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth in writing its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. Grantee shall be given at least 30 days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

7.3 Removal of System. Upon termination, Grantee agrees to remove the Cable System from the streets and dedicated easements of Grantor.

Section 8. Consumer Protection Provisions

8.1 Subscriber Complaints and Repairs. Grantee shall maintain a telephone number for the reception of complaints. All complaints regarding quality of service, equipment malfunction, billing disputes, or any other matters relative to the cable communications system shall be responded to by Grantee whenever possible within 24 hours of notice to Grantee. Grantee shall maintain a repair service capable of responding to Subscriber complaints or requests for repairs within 24 hours after receipt of said complaints or requests. Grantee shall resolve the complaint, if reasonably possible, within five working days. Costs for making such repairs, shall be borne by Grantee unless otherwise provided in the Subscriber's contract, or unless said repairs are necessitated by the negligence or deliberate acts of the Subscriber. In such cases, the Subscriber shall bear the costs. Installation charges shall be borne by the Subscriber.

Section 9. Miscellaneous Provisions

9.1 Preemption. If any federal or state body or agency, shall now or hereafter preempt Grantor's authority, the jurisdiction of Grantor shall cease and no longer exist.

9.2 Publication Costs. Grantee shall assume the cost of publication of this Franchise as such publication is required by law. A bill for publication expense shall be presented to Grantee by the City Clerk upon publication of this Ordinance.



9.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon Grantor or Grantee shall be in writing and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. Postal Service.

Every notice served upon Grantor shall be delivered or sent by certified mail, return receipt, to:

Mayor and/or City Administrator City of Eagle Bend  
PO Box 215  
Eagle Bend, MN 56446

Every notice served upon Grantee shall be delivered or sent by certified mail, return receipt required, to:

Director of Video  
150-2nd Street SW  
Perham, MN 56573

9.4 Successors. All provisions of this Ordinance shall apply to the respective parties, their successors and assigns.

9.5 Survivability. If any particular section of this Ordinance shall be held invalid, the remaining provisions and their application shall not be affected thereby.

9.6 Effective Date. This Ordinance shall take effect on the date adopted by Grantor

Adopted by the City Council of Eagle Bend, Minnesota, on the 19th day of May, 2008.