

901 CABLE FRANCHISE: DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

901.010 “Affiliate” means any Person controlling, controlled by or under common control of Grantee.

901.020 “Applicable Law(s)” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority of competent jurisdiction.

901.030 “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast, as set forth in Applicable Law, currently 47 U.S.C. §522(3).

901.040 “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

901.050 “Cable Service” means (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and b) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service, as set forth in Applicable Law, currently 47 U.S.C. § 522(6). For the purposes of this definition, “other programming service” means information that a cable operator makes available to all Subscribers generally.

901.060 “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (b) a facility that serves Subscribers without using any Streets;
- (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) an open video system that complies with 47 U.S.C. § 573; or

- (e) any facilities of any electric utility used solely for operating its electric utility system.

Unless otherwise specified, it shall in this document refer to the Cable System constructed and operated in the City under this Franchise.

901.070 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation, as set forth in Applicable Law, currently 47 U.S.C. § 522(4).

901.080 “City” means the City of Birchwood Village, a municipal corporation in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

901.090 “City Code” means the Municipal Code of the City of Birchwood Village, Minnesota, as may be amended from time to time.

901.100 “Commission” means the Ramsey Washington Counties Suburban Cable Communications Commission II or its successors, delegations, or its lawfully appointed designee, including representatives of the Member Cities as may exist pursuant to a then valid and existing Joint and Cooperative Agreement among Member Cities.

901.110 “Converter” means an electronic device, including Digital Transport Adapters, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all Cable Service signals.

901.120 “City Council” means the governing body of the City of Birchwood Village, Minnesota.

901.130 “Day” means a calendar day, unless otherwise specified.

901.140 “Drop” means the cable that connects the Subscriber terminal to the nearest feeder cable of the cable in the Street and any electronics on subscriber property between the Street and the Subscriber terminal.

901.150 “Effective Date” means April 1, 2021.

901.160 “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

901.170 “Franchise” means the right granted by this Franchise Ordinance and the regulatory and contractual relationship established hereby.

901.180 “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

901.190 “Franchise Fee” means the fee assessed by the City to Grantee, in consideration of Grantee’s right to operate the Cable System within the City’s Streets, determined in amount as a percentage of Grantee’s Gross Revenues and limited to the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E).

901.200 “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

901.210 “Gross Revenues” means, and shall be construed broadly to include, all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross Revenues include, by way of illustration and not limitation:

- (f) monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
- (g) fees paid to Grantee for Channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service Subscribers within the City;
- (h) Converter, digital video recorder, remote control, and other Cable Service equipment rentals, leases, or sales;
- (i) installation, disconnection, reconnection, change-in service, “snow-bird” fees;
- (j) Advertising Revenues as defined herein;
- (k) late fees, convenience fees, and administrative fees;
- (l) other service fees such as HD fees, convenience fees, broadcast fees, regional sports fees, home tech support fees, bill payment fees for in-person or phone payments, additional outlet fees, and related charges relating to the provision of Cable Service;
- (m) revenues from program guides and electronic guides;
- (n) Franchise Fees;
- (o) FCC regulatory fees;
- (p) except as provided in subsection (ii) below, any fee, tax or other charge assessed against Grantee by municipality, which Grantee chooses to pass through and collect from its Subscribers; and
- (q) commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service Subscribers within the City.

“Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System Subscribers within the City and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to Franchise Fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications and

Comcast Spotlight or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.

(i) “Gross Revenues” shall not include:

1. actual bad debt write-offs, except any portion which is subsequently collected, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Subscriber revenues within the City; and
2. unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

Grantee shall allocate fees and revenues generated from bundled packages and services to cable revenues pro rata based on the current published rate card for the packaged services delivered on a stand-alone basis as follows:

(i) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a GAAP methodology that allocates revenue, on a pro rata basis, when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law (for example, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value). The City reserves its right to review and to challenge Grantee’s calculations.

(ii) Grantee reserves the right to change the allocation methodologies set forth in this section in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to the City upon request or as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to the next subsection below.

(iii) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the parties, but should no resolution be reached, the parties agree that reference shall be made to GAAP as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the foregoing, the City reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

Notwithstanding the above provisions, Grantee will calculate Franchise Fees using the same methodology it uses for all Twin Cities Region franchising authorities with respect to the allocation of revenues among Cable and non-cable Services. Upon written notice by City to Grantee showing that Grantee has afforded more favorable treatment with respect

to the allocation of revenues among Cable and non-cable Services to a local franchising authority elsewhere in the Twin Cities Region, City will get the same favorable treatment Grantee provides to such local franchising authority. Specifically, this methodology is intended to provide City with equivalent treatment of revenues earned from multi-service (for example late fees, nonsufficient-funds fees) and convenience fees assessed on customers to service bundles that include non-cable services. This “most favored nations” provision will not apply where Grantee settles a franchise fee dispute which does not address the treatment of multi-service fees, bundled revenues or GAAP. However, this “most favored nations” provision will apply in the event of any order or judgment resolving a dispute regarding treatment of multi-service fees, bundled revenues, or GAAP between Grantee and a local franchising authority in the Twin Cities Region which results in more favorable treatment with respect to the allocation of revenues among Cable and non-cable Services to the local franchising authority than that afforded by Grantee to City.

901.220 “Member Cities” means those cities that are parties to a then valid and existing joint powers agreement which, at the time of granting this Franchise, include Birchwood Village, Dellwood, Grant, Lake Elmo, Mahtomedi, Oakdale, White Bear Lake, White Bear Township, and Willernie.

901.230 “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.

901.240 “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, telephone network 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 Cable System.

901.250 “PEG” means public, education and government.

901.260 “Person” means any natural person and all domestic and foreign corporations, closely-held corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and/or any other legal entity.

901.270 “Street” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A Street does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

901.280 “Subscriber” means a Person who lawfully receives Cable Service.

901.290 “Twin Cities Region” shall mean the cities in Minnesota wherein Grantee or Affiliate hold a franchise agreement to provide Cable Service.

901.300 “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

901.310 “Wireline MVPD” means any entity, including the City, that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of Video Programming in the City, which could also include the City. For purposes of this Franchise, the term “Wireline MVPD” shall not be limited to entities defined by the FCC as “multichannel video programming distributors” and shall include entities that provide multiple Channels of Video Programming via open video systems, as defined by the FCC, but it is the intent of the Grantee and the City that the term Wireline MVPD shall not include small cell providers, unless the City has the legal authority under Applicable Law to regulate or to impose cable franchise obligations upon such small cell providers.

