

902. CABLE FRANCHISE: FRANCHISE

902.010 GRANT OF FRANCHISE

The City hereby authorizes Grantee to occupy or use the City's Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Unless this Franchise has expired pursuant to Section 902.080 herein or this Franchise is otherwise terminated pursuant to Section 911.020 herein, this Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise.

Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate. Except as expressly provided herein, in granting this Franchise, City and Commission release Grantee from any claims they have or could have asserted with respect to underpayment of franchise or other fees through March 31, 2021, under the previous franchise, assuming that the fees owed through March 31, 2021, but not yet paid, are calculated in the same manner that they have been calculated and paid in 2020 (without offsets), and assuming that the fees are timely paid (e.g., the last franchise fee payment under the old franchise must be paid by May 15, 2021).

The parties do not waive any rights the parties may have under the previous franchise regarding Grantee's compliance with all applicable obligations governing Grantee's facilities in Streets, the duty to indemnify, and the duty to repair or pay for damages to public or private property. Conversely, claims that (1) arise before April 1, 2021, and (2) that do not relate to Grantee's compliance with all applicable obligations governing Grantee's facilities in Streets, the duty to indemnify, and the duty to repair or pay for damages to public or private property, are not expressly preserved. A condition that violates this Franchise does not "arise before" April 1, 2021, if that violation exists after April 1, 2021, even if it was also present before the renewal.

902.020 RESERVATION OF AUTHORITY

The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or applicable regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power.

Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves all rights it

may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

902.030 FRANCHISE TERM

The term of this Franchise shall be ten (10) years from the Effective Date, unless renewed, amended or extended by mutual written consent in accordance with Section 917.080 or terminated sooner in accordance with this Franchise.

902.040 FRANCHISE AREA

This Franchise is granted for the Franchise Area defined herein. Grantee shall extend its Cable System to provide Service to any residential unit in the City in accordance with Section 906.060 herein.

902.050 FRANCHISE NONEXCLUSIVE

The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described in Section 917.200. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. § 238.08 and any other applicable federal level playing field requirements.

902.060 PERIODIC PUBLIC REVIEW OF FRANCHISE

The City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in accordance with Applicable Law, and considering any new cable technology, Grantee's performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. So long as Grantee receives reasonable notice, Grantee shall cooperate in good faith. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 917.080 of this Franchise. The City and Grantee shall each be responsible for their own costs regarding the conduct of, or cooperation with, any such periodic review.

902.070

TRANSFER OF OWNERSHIP

- (a) A sale or transfer of this Franchise, including a sale or transfer by means of a “fundamental corporate change,” as defined in Minn. Stat. § 238.083 Subd. 1, or the sale or transfer of stock in Grantee so as to create a new “controlling interest,” as defined in Minn. Stat. § 238.083 Subd. 6, in the Cable System, shall require the written approval of the City. Grantee shall submit a written request to the City for the City’s approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness. The written approval of the City shall not be required under this section for internal corporate reorganizations involving Affiliates or pledges of the Franchise as collateral or security for any loan or other debt instrument.
- (b) City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.
- (c) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 902.070. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- (d) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.
- (e) In accordance with Minn. Stat. § 238.084, Subd. 1(y), the City shall have the right to purchase the System in the event the Franchise or System is proposed to be transferred or sold on the same terms and conditions as the offer pursuant to which transfer notice was provided pursuant to this section. The City shall have thirty (30) days from receipt of an application for consent under this Section 902.070 in which to give notice of its intention to consider exercising such right.
- (f) If the City has issued a written notice of franchise violation in accordance with the terms of this Franchise, the transfer may be conditioned upon the transferee agreeing to a mutually acceptable remediation plan. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to the City.

902.080

EXPIRATION

Upon expiration of the Franchise, the City shall have the right at its own election and subject to Grantee’s rights under Section 626 of the Cable Act to:

- (a) extend the Franchise, though nothing in this provision shall be construed to require such extension;
- (b) renew the Franchise, in accordance with Applicable Laws;
- (c) invite additional franchise applications or proposals;
- (d) terminate the Franchise subject to any rights Grantee has under Section 626 of the Cable Act; or
- (e) take such other action as the City deems appropriate

902.090

RIGHT TO REQUIRE REMOVAL OF PROPERTY

At the expiration of the term for which this Franchise is granted, provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System from all Streets and public ways within the Franchise Area within a reasonable time. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

902.100

CONTINUITY OF SERVICE MANDATORY

It shall be the right of all Subscribers to receive Cable Service in accordance with the terms of this Franchise and Applicable Law. In the event that Grantee elects to overbuild, rebuild, modify, or transfer the system in accordance with Section 902.070, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, while the Franchise remains effective. In the event of expiration, revocation/termination, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications franchise, the current Grantee shall cooperate fully to operate the system in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of service to all Subscribers.