

917. CABLE FRANCHISE: MISCELLANEOUS PROVISIONS

917.010 POSTING AND PUBLICATION

Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

917.020 GUARANTEE OF PERFORMANCE

Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a ten (10) year Franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by Grantee.

917.030 ENTIRE AGREEMENT

This Franchise contains the entire agreement between the parties and supersedes all prior agreements or proposals except as specifically set forth herein.

917.040 CONSENT

Wherever the consent or approval of either Grantee or the City is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

917.050 PRIOR FRANCHISE TERMINATED

The cable television franchise originally granted by Resolution No.1995-5 is hereby terminated.

917.060 PRIOR REGULATORY AGREEMENTS TERMINATED

The Memorandum of Understanding and Regulatory Agreement dated March 9, 1995 (herein "MOU"), the March 10, 2014 Settlement Regarding PEG Capacity (herein "2014 Settlement Agreement"), and any other prior settlement agreements or memorandums of understanding are terminated and of no further effect. Grantee releases any claims it has against City and the Commission with respect to its asserted rights to offset past payments made to the Commission pursuant to the MOU and the 2014 Settlement Agreement against Franchise Fees, and any claim of overpayment of franchise fees or other fees.

917.070 FRANCHISE ACCEPTANCE

No later than thirty (30) Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds, security funds, and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to provide the required executed Franchise, insurance certificate as required by Section 916.070(j) and the Bond, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

917.080 AMENDMENT OF FRANCHISE

Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made to address technology changes or advances subsequent to a review session pursuant to Section 902.060 or at any other time if City and Grantee agree that 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 City's exercise of its police powers.

917.090 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 the Grantee or the City's administrator of this Franchise during Normal Business Hours or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City Administrator
 City of Birchwood Village
 207 Birchwood Avenue
 Birchwood Village, MN 55110

If to Commission:
 Executive Director
 Ramsey Washington Counties Suburban
 Cable Communications Commission
 2460 East County Road F
 White Bear Lake, MN 55110

If to Grantee:
 General Manager
 Comcast
 10 River Park Plaza
 St. Paul, MN 55107

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

Recognizing the widespread usage and acceptance of electronic forms of communication, emails will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications required under Section 914.100. Such communication should be addressed and directed to the Person of record as specified above.

917.100 FORCE MAJEURE

In the event that either party is prevented or delayed in the performance of any of its obligations under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, delays in receiving permits where it is not the fault of Grantee, public easements, sabotage, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

917.110 WORK OF CONTRACTORS AND SUBCONTRACTORS

Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

917.120 GOVERNING LAW

This Franchise is made pursuant to Minnesota Statutes Chapter 238 and the City Code and is intended to comply with all requirements set forth therein. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

917.130 COMMISSION

In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City and the rights and obligations related thereto shall, where possible, accrue to the City unless or until a new franchise is executed between Grantee and City. Nothing herein shall in any way modify or alter any rights or obligations the City or Commission may have under the Joint and Cooperative Agreement between the parties. In the event that the Commission lawfully merges with another commission, it would not be deemed by the Grantee a withdrawal for purposes of this franchise.

917.140 NONENFORCEMENT BY CITY

Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City or to enforce prompt compliance.

917.150 CAPTIONS

The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Franchise.

917.160 CALCULATION OF TIME

Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period or duration of time. When the last Day of the period falls on Saturday, Sunday or a legal holiday that Day shall be omitted from the computation and the next business Day shall be the last Day of the period.

917.170 NO WAIVER

All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

917.180 GRANTEE ACKNOWLEDGEMENT 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.

917.190 SURVIVAL OF TERMS

Upon the termination or forfeiture of the Franchise, Grantee shall no longer have the right to occupy the Streets for the purpose of providing Cable Service. However, Grantee's obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms.

917.200 COMPETITIVE EQUITY

- (a) The Grantor has the authority to grant franchises that allow entities to construct and operate facilities in the Public Rights-of-Way that may be used to provide video programming services to residences that compete with Grantee's services. If Grantor grants such a franchise to an entity that provides competitive video programming services to residences that contains material terms and conditions that differ from Grantee's material obligations under this Franchise, then the parties agree that the processes and provisions of this Section will apply.

(b) If Grantor grants a franchise to an entity that provides competitive video programming services to residences that contains material terms and conditions that differ from Grantee's material obligations under this Franchise, the Grantor and Grantee will either negotiate the terms of this Franchise to include any material terms or conditions that the Grantor imposes upon the new entrant, or negotiate amendments to the Franchise to insure that the regulatory and financial burdens on each Grantee are materially equivalent. "Material terms and conditions" include franchise provisions related to: Franchise fees and Gross Revenues; Operation in Streets and Rights-of-Way (Section 903), number of Public, Education and Government Access Channels and their funding; customer service standards; required reports and related record keeping; and liquidated damages. The parties agree that this provision shall not require an identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens in their entirety on each entity are materially equivalent.

(c) Exemptions. The following are exempt from this Section:

- (i) video programming services delivered over wireless networks, unless the state or FCC has determined that these are subject to City franchising authority;
- (ii) video programming services delivered via means over systems that are not subject to the Grantor's franchising authority or upon which the Grantor may not impose similar requirements, under state or federal law, including a system described in 47 U.S.C. § 651(a)(2);
- (iii) telecommunication services;
- (iv) interstate information services;
- (v) any new franchise that is issued for less than 10% of the territory of the City. For the avoidance of doubt, this exemption is not intended to preclude the Grantee's pursuit of any remedies it may have under Minn. Stat. § 238.08, Subd. 1.

(d) Limits on Relief. The parties agree that:

- (i) Grantee may not withhold, delay or enjoin any performance or otherwise refuse to comply with its obligations whether or not it believes it is entitled to relief under this Section;
- (ii) Any relief shall be prospective only, and limited to the relief agreed upon, or the modifications obtained through any renewal of this Franchise;
- (iii) Grantor will not be liable for any damages to Grantee for any breach of this provision; and
- (iv) Grantee may not obtain any relief from non-franchise obligations it may have under settlements or other contracts with the Grantor via this provision.

(e) Modifications Process, Initiation. The modifications process provided for herein

shall only be initiated by written notice provided by Grantee to Grantor regarding specified franchise obligations. Grantee's notice must: (1) identify the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide text for any proposed Franchise amendments to the Grantor with a written explanation of why the proposed amendments are necessary and consistent; and (4) confirm whether Grantee is willing to accept any additional obligations that may be contained within the modified franchise that are not contained within its franchise.

- (f) Negotiation. Upon receipt of Grantee's written notice as provided under subsection (e) above, Grantor and Grantee agree that they will use best efforts in good faith to negotiate the proposed Franchise modifications to achieve competitive equity of regulatory and financial burdens, and that such negotiation will proceed and conclude within a one hundred and eighty (180) day period, unless that time period is reduced or extended by mutual agreement of the parties. If Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then Grantor shall amend this Franchise to include the modifications insofar as permitted under City law. If the Grantor and Grantee fail to reach agreement in such negotiations, Grantee may elect to shorten the remaining term of this Franchise to not more than thirty-six (36) months, and Grantee may pursue non-monetary equitable relief it deems necessary to enforce its rights under this Section. If Grantee elects to shorten the term of this Franchise pursuant to this Section, Grantee shall be deemed to have timely invoked the formal renewal rights and procedures set forth in Section 626 of the Federal Cable Act.
- (g) Actual Providers. Notwithstanding anything contained herein to the contrary, Grantor shall not be obligated to amend this Franchise unless the new entrant is actually providing video programming services under a franchise granted by Grantor.

917.210 TREATMENT OF NEGOTIATED PROVISIONS

For the term of this Franchise any costs incurred by Grantee pursuant to Sections 907.020((c)), 907.050(c), 907.080, 907.090, 907.100, 907.120, 907.140, 907.150, 907.160, 913.010, 913.020, 913.030, and 913.040 shall be treated by Grantee as Grantee's business expense and not a Franchise Fee under Sections 901.190 and 916.010 of this Franchise or as a PEG Fee under Section 907.130 of this Franchise. Grantee reserves any rights it may have to recover from Subscribers, as a separate line item from the PEG Fee in Section 907.130 of this Franchise, any PEG capital costs set forth in Section 907.020(a) and (c), 907.080, 907.090, 907.100, 907.110, 907.150 and 907.160 as may be permitted by Applicable Law as of the Effective Date.

Passed and adopted this 13th day of, April 2021

ATTEST

City of Birchwood Village, Minnesota

By: Andy Gonyou

By: Mary Wingfield

Its: City Clerk

Its: Mayor

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

COMCAST OF MINNESOTA, INC.

Date: _____

By: _____

Its: _____

SWORN TO BEFORE ME this

____ day of _____, 2021.

NOTARY PUBLIC