

**CABLE TELEVISION
FRANCHISE ORDINANCE
CITY OF RUSHFORD, MN**

Aug 12, 2019

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EXHIBIT A SERVICE TO PUBLIC BUILDINGS

ORDINANCE NO. A 19-100

AN ORDINANCE GRANTING A FRANCHISE TO ACE TELEPHONE ASSOCIATION D/B/A ACEN TEK TO OPERATE AND/OR MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF RUSHFORD, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE.

The City Council of the City of Rushford, Minnesota ordains.

STATEMENT OF INTENT AND PURPOSES

The City of Rushford intends, by the adoption of this Franchise, to bring about the development of a Cable System, and the continued operation of it. Such a development can contribute significantly to the communications needs and desires of the residents and citizens of the City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by City complies with the existing applicable state statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

SECTION 1. SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Agreement shall be known and cited as the Franchise Agreement.
2. Definitions. For the purposes of this Franchise Agreement, capitalized terms shall be defined as set forth in the Franchise and, 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.

- a. Applicable Laws” means any local law or federal or state statute, law, regulation or other final legal authority governing any of the matters addressed in this Franchise.
- b. Basic Cable Service” means the lowest available Service tier which includes the lawful retransmission of local television broadcast signals and any local broadcast stations carried pursuant to must-carry requirements, 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. § 543(b) (7).
- c. Cable Service” or Service” means any service tier which includes the lawful transmission of local television broadcast signals. Cable Service or Service shall specifically include (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. Cable Service or Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
- d. Cable Act” means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and as the same may, from time to time, be amended.
- e. Cable System” or System” means a system of antennas, fiber, cables, wires, lines, towers, waveguides, or other conductors, Converters, equipment or facilities located in City and designed and constructed for the purpose of producing receiving, transmitting, amplifying, or distributing, video. System as defined herein shall not be inconsistent with the definitions set forth in Minn. Stat. 238.02, subd. 3 and 47 U.S.C. § 522(7). City and Grantee acknowledge and agree that Grantee will use affiliated telephony and/or broadband networks to overlay video service to the City and will remain in compliance with this Franchise. Cable System or System does not include:

A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

A facility that serves Subscribers without using any public rights-of-way;

A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541) 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;

An open video system that complies with Section 653 of the Cable Act; or

Any facilities of any electric utility used solely for operating its electric utility system.

- f. “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.
- g. “City” means the City of Rushford, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
- h. “City Council” means the governing body of the City of Rushford, Minnesota.
- i. “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.
- j. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- k. “Franchise” means this Franchise and the regulatory and contractual relationship established hereby.
- l. “Franchise Fee” means any tax, fee or assessment authorized by Cable Communications Act of 1984 and imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); (ii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for letters of credit, insurance, indemnification, penalties or liquidated damages; or (iii) any fee imposed under Title 17 of the United States Code.
- m. “Governmental Authority” means any court or other federal, State, county, municipal or other governmental department, commission, board, agency or instrumentality with jurisdiction over the City.
- n. “Grantee” is Ace Telephone Association, d/b/a AcenTek, its agents and employees, lawful successors, transferees or assignees.
- o. “Gross Revenues” means all revenues derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area Revenues Subject to Franchise Fees shall include all subscriber and non-subscriber revenue derived by the Grantee in the Service Area excluding home shopping network revenues, ad insertion revenues, and pay per view and video on demand (PPV/VOD) revenues.
- p. “Normal Business Hours” means those hours during which Grantee advertises as their normal business hours.
- q. “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,

content negotiation disputes and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.

r. “Pay Television” means the delivery over the System 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.

s. “PEG” means public, educational and governmental.

t. “Person” means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

u. “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in this Franchise.

v. “Service Interruption” means the loss of picture or sound on one or more cable channels.

w. “Standard Installation” means any residential Installation within one hundred fifty (150) feet or less.

x. “Streets” means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. “Street” shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures and other structures or improvements, regardless of whether they are situated in the public right-of-way.

y. “Subscriber” means any Person who lawfully elects to subscribe to Cable Service via the System, and in the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Franchise Required. It shall be unlawful for any Person, unless specifically required by Applicable Laws, to construct, install, operate or maintain a Cable System or to offer Cable Service in the City, unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise.

2. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein.

3. Grant of Nonexclusive Authority.

a. The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, alleys, public ways and public places now

laid out or dedicated and all extensions thereof, and additions thereto in City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in City of a Cable System as herein defined.

b. Grantee shall have the authority to use City easements, public rights-of-way, Streets and other conduits for the distribution of Grantee's System. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if City, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such Street was created or dedicated, or with the present use of the Street.

c. The Franchise granted herein is non-exclusive. The City specifically reserves the right to grant, at any time, additional franchises for a System in accordance with state and federal law. Any additional franchise or franchises granted by the City shall be granted in compliance with Minnesota Statutes Chapter 238 as may be amended from time to time

4. Compliance with Laws. This Franchise complies with the Minnesota franchise standards contained in Minnesota Chapter 238 as may be amended from time to time. Grantee shall comply with all applicable City Code and Ordinances.

5. Previous Franchises. This Franchise shall supersede any previous Franchise granting a franchise to Grantee to own, operate and maintain a System within the City. Franchise Ordinance No. A100 is hereby repealed.

6. Franchise Term. This term of this Franchise shall be for the period of ten (10) years from the date of acceptance by Grantee, unless sooner renewed, revoked or terminated as herein provided.

7. Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise Agreement and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, City, or any other body having lawful jurisdiction thereof.

8. Territorial Area Involved. This Franchise is granted for the corporate boundaries of 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 area covered, provided, however, that Grantee shall not be required to extend Service beyond its present System boundaries unless there is a minimum density equivalent of eight (8) homes per one-quarter (1/4) cable mile as measured from the nearest tap required to deliver a signal that complies with FCC Technical Standards, if applicable. 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 a reasonable period of time, not to exceed three (3) months to construct

- a. Cable System office hours and telephone availability:
- b. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
- c. Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

12. Installations, outages and service calls.

- a. 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. Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.
- b. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment unless due to circumstances beyond their control.
- c. If Grantee’s representative 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. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

13. Communications between Grantee and Subscribers:

Notifications to Subscribers:

- a. Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers. This notice may, in Grantee’s sole discretion, be delivered electronically as long as it is directly communicated to Subscribers or inserted into a direct subscriber billing or by directing customers to Grantee website, and at any time upon request:
- b. Products and Services offered;
- c. Prices and options for programming services and conditions of subscription to programming and other Services;
- d. Installation and Service maintenance policies;
- e. Instructions on how to use the Cable Service;
- f. Channel positions of the programming carried on the System; and
- g. Billing and complaint procedures, including the address and telephone number of the Grantee’s office.
- h. Customers will be notified of any changes in rates, programming services or Channel

positions as soon as possible in writing. This notice may, in Grantee's sole discretion, be delivered electronically as long as it is directly communicated to Subscribers or inserted into a direct subscriber billing, or by directing customers to Grantee website. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. For loss of content due to contract negotiations with programmers, Grantee must notify customers as soon as reasonably can be accomplished and in a manner decided by Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by Section 2.11 (c)(1). Grantee may but shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or franchising authority on the transaction between the operator and the Subscriber.

14. Billing:

a. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

b. Refunds: Refund checks will be issued promptly, but no later than either:

i. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

ii. The return of the equipment supplied by Grantee if Service is terminated.

c. Late Fees. Fees for the late payment of bills shall not be assessed until after the Service has been fully provided and, as of the due date of the bill notifying Subscriber of an unpaid balance, the bill remains unpaid.

d. Credits: Credits for Service will be issued to subscriber account following the determination that a credit is warranted.

SECTION 3. DESIGN PROVISIONS

1. Programming Additions. All programming decisions remain the sole discretion of Grantee provided that Grantee complies with federal law regarding notice to City and Subscribers prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations pursuant to 47 U.S.C. §§ 531-536, and subject to City's rights pursuant to 47 U.S.C. § 545.

2. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Communications Systems pursuant to the FCC's rules and regulations and found in Title 47, Sections 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

3. Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements.

SECTION 4. SERVICES PROVISIONS

1. Rate Regulation. The City reserves the right to regulate rates for Basic Cable Service and any other regulated services offered over the Cable System, to the extent not prohibited by Applicable Laws. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time.

2. Leased Channel Service. Grantee shall offer leased Channel service on reasonable terms and conditions and in accordance with Applicable Laws.

3. Refund Policy. In the event a Subscriber established 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. City and Grantee acknowledge certain packages, tiers, or level of service have a minimum one month billing are not subject to pro rata credits.

4. Subscriber Privacy.

a. To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following: 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. 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 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 or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available.

b. 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 (b) of this section.

c. For purposes of this provision, a "Class IV Channel" means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

SECTION 5. PUBLIC ACCESS PROVISIONS

1. Public, Educational and Government Access.

a. The City or its designee is hereby designated to operate, administer, promote, and manage access programming (public, educational, and governmental programming) (hereinafter "PEG Access") to the Cable System established pursuant to this Section 6. Grantee shall have no responsibility whatsoever for PEG Access except as expressly stated in this Section 6 or by a written agreement between City and Grantee.

b. Grantee shall dedicate one (1) Channel for PEG Access use on the System to be used by the City or its designee immediately. Additionally, the City shall have the right to request a second PEG Access channel at any time upon written request to the Grantee. The Grantee shall activate the second channel upon ninety (90) days written notice from the City. All residential Subscribers who receive all or any part of the total Services offered on the System shall be eligible to receive said access Channel at no additional charge. Nothing herein shall be construed to diminish the City's rights pursuant to Minn. Stat. § 238.084, incorporated herein by reference.

c. Grantee shall not degrade the visual or audio quality of the PEG Channel(s) received from the City. Grantee shall not be required to carry a PEG Channel in a higher quality format than that of the signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of PEG Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System.

d. Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a PEG Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If problem is found with the origination of the PEG Channel or equipment operated by the City or its designee, then Grantee's applicable billable rates will apply to the City. Grantee shall cablecast the entire programming stream of each PEG Channel including any Program Related Material, as defined below in this Paragraph 6(d)), "Program Related Material" shall mean (i) closed-captioning information, (ii) program identification codes, (iii) program ratings information, (iv) such other material as may be essential, necessary or appropriate for the delivery or distribution of the signal, and (v) information and material that is directly related to the subject matter of the programs on the PEG Channels, if such information or material is transmitted concurrently or substantially concurrently with its associated program content.

e. Grantee may relocate the PEG Channels from their present Channel location with thirty (30) days prior written notice to City. The PEG Channels will be located in the channel neighborhood within reasonable proximity to other commercial video or broadcast Channels in Grantee's reasonable discretion, excluding pay-per-view programming offered by Grantee in the City. In addition to the foregoing, PEG Channels may be used for transmission of non-video

signals in compliance with Cable Communications Act of 1984.

f. Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the PEG Channels shall be treated in a non-discriminatory fashion consistent with Applicable Law so that Subscribers will have ready access to PEG Channels. This shall not be construed to require Grantee to pay any third party fees that may result from this obligation.

g. Noncommercial Use of PEG. Permitted noncommercial uses of the PEG Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes.

h. PEG Channels will not be used to advertise or promote competing products or services or used to provide opinions or other content which may place a negative image of Grantee. Grantee will make sole determination whether content breaches this provision. Breaches are subject to immediate termination of PEG Channel without reinstatement.

2. Access Support.

a. On the effective date of this cable franchise agreement, Grantee shall pay Access Support to the City in the amount of .75% of the Grantee's Gross Revenues (the "Access Fee"). The Access Fee shall be paid on the same schedule as the Franchise Fee set forth in Section 6.1 of this Franchise.

b. The Access Fee is not part of the Franchise Fee, and falls within one (1) or more of the exceptions in 47 U.S.C. § 542. Such costs may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Law. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the Access Fee.

c. Should Grantee continue to provide Cable Service after the scheduled expiration of this Franchise, until and unless this Franchise is superseded by a renewed Franchise in accordance with Applicable Law, Grantee shall continue to make monthly Access Fee payments for, and in support of PEG Channels as specified hereinabove.

d. Should City or its designee cease providing PEG Channels, City will immediately notify Grantee to cease billing and collection of PEG fees from subscribers.

e. Any Access Fee amounts owing pursuant to this Franchise which remain unpaid more than thirty (30) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the day the payment was due, whichever is greater.

3. Access Rules.

a. The City shall implement rules for use of any specially designated PEG Access Channels.

The initial access rules and any amendments thereto shall be maintained on file with the City and available for public inspection during Normal Business Hours.

b. Prior to the cablecast of any program on any PEG Access Channel established herein, the City shall require any Person who requests access (public, education, and government) to the System to provide written certification in a form and substance acceptable to the City.

c. City specifically agrees to indemnify, defend, and hold harmless Grantee, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgements, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected from the City or its officials, boards, commissions, agents, or employees in utilizing or operating any PEG channels, equipment, or facilities and for any such work performed by City and permitted by this Franchise.

4. Periodic Evaluation. Upon written request from either party, Grantee and City shall meet to evaluate the effect of Section 6, above. Both parties agree to discuss any proposal for modification presented by the other party. Nothing herein shall presume or require consent to any such proposed modification. Modifications may only occur by mutual written consent of both parties. The notice and meeting contemplated herein shall be required to occur no more than every three (3) years after adoption of this Franchise, however, nothing shall prevent mutually agreed upon negotiations between both parties at any time.

5. Compliance with Minnesota Statutes Chapter 238. In addition to the requirements contained in this Section 6 of this Franchise, Grantee and City shall comply with the PEG requirements mandated by Minnesota Statutes 238.084.

SECTION 6. OPERATION AND ADMINISTRATION PROVISIONS

1. Franchise Fee.

a. During the first two years of the Franchise, Grantee shall pay quarterly to the City a Franchise Fee of two and one-half percent (2.5%) of Gross Revenues. After the expiration of the second year of the Franchise, the first year of which shall commence on the date this Agreement is executed, City may adjust franchise percentage upon 90 days written notice and supply Grantee with certified copy of Resolution from City Council adopting any lawful change in percentage. If any such law, regulation or valid rule alters the Franchise Fee ceiling enacted by the Cable Act, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly but shall be required to reduce such fee if the ceiling is lowered, provided such increase is for purposes not inconsistent with Applicable Law..

b. Each Franchise Fee payment shall be paid monthly not later than thirty (30) Days following the end of a given month and each payment shall be certified by a representative of Grantee' and shall be accompanied by a report in such form as the City may reasonably request showing the

computation of the Franchise Fee as it relates specifically to the Service Area for the preceding calendar quarter and such other relevant facts as may be required by the City.

c. Except as otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under this Franchise or for the performance of any other obligation of the Grantee. Failure by the City to enforce compliance with the requirements of this Section 6.1 shall not serve to waive of the City rights to pursue full payments of all fees owed the City, together with applicable interest, to the maximum extent permitted by applicable law.

d. Any Franchise Fees not paid to City within thirty (30) Days after the end of each calendar quarter shall accrue late charges at the rate of one percent (1%) per month compounded monthly from the date such amounts were due until such amounts and accrued late charges are paid.

e. Upon ten (10) Days prior written notice, City shall have the right to conduct an independent review/audit of Grantee's records.

2. Not Taxes.

a. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this section shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542.

b. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City that do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542 as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made by Grantee to City pursuant to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

SECTION 7. GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Liability Insurance.

a. Grantee shall with its acceptance of this Franchise, and at its sole expense, take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A" that shall protect the Grantee, the City and their officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to

bodily and personal injury and property damage shall not be less than Two Million Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:

- i. The policy shall provide coverage on an “occurrence” basis;
 - ii. The policy shall cover personal injury as well as bodily injury;
 - iii. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage;
 - iv. Broad form property damage liability shall be afforded;
 - v. Standard form of cross-liability shall be afforded; and
 - vi. Grantee shall maintain an umbrella insurance policy providing coverage in excess of its primary commercial general liability, automobile liability and employer’s liability policies in an amount not less than Twenty Million and no/100 Dollars (\$20,000,000.00) per occurrence and Twenty Million Dollars (\$20,000,000.00) general aggregate.
- b. On the Effective Date of this Franchise, Grantee shall submit to City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

2. Indemnification.

- a. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the “Indemnified Parties”) harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney’s fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the grant of this Franchise, the operation of Grantee’s System, the breach by Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee’s employees, including compliance with Social Security and withholdings.
- b. The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers’ Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise, or the terms, applicability or limitations of any insurance held by Grantee.
- c. City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.

d. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

e. Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees. City shall hold Grantee harmless, subject to the limitations in Minnesota Statutes Chapter 466, for any damage resulting from the negligence or misconduct of the City or its officials, boards, commissions, agents, or employees in utilizing any PEG Access Channels, equipment, or facilities and for any such negligence or misconduct by City in connection with work performed by City and permitted by this Franchise, on or adjacent to the Cable System.

SECTION 8. TRANSFER AND ENFORCEMENT

1. Procedure for Enforcing Franchise.

a. In the event City believes that Grantee has breached or violated any material provision of this Franchise, City may act in accordance with the following procedures:

b. City may notify Grantee of the alleged violation or breach and demand that Grantee cure the same within a reasonable time, which shall not be less than ten (10) days in the case of an alleged failure of the Grantee to pay any sum or other amount due the City under this Franchise and thirty (30) days in all other cases. If Grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the City shall then give written notice of not less than fourteen (14) days of a public hearing to be held before the City Council. Said notice shall specify the violations or breaches alleged to have occurred. At the public hearing, the City Council shall hear and consider relevant evidence and thereafter render findings and its decision whether to terminate the Franchise. In the event the City Council finds that a materials violation or breach exists and that Grantee has not cured the same in a satisfactory manner Grantee shall pay a penalty of up to \$500 per day per violation or breach, or the City may terminate the Franchise. If the City chooses to terminate this Franchise, the following additional procedure shall be followed:

i. The City shall provide Grantee with written notice of the City's intention to terminate this Franchise and specify in detail the reason or cause for the proposed termination. The City shall allow Grantee a minimum of fifteen (15) days subsequent to receipt of the notice in which to cure the default.

ii. Grantee shall be provided with an opportunity to be heard at a regular or special meeting of City prior to any final decision of City to terminate this Franchise.

iii. In the event that City determines to terminate this Franchise, the Grantee shall have an opportunity to appeal said decision in accordance with all Applicable Laws.

iv. If a valid appeal is filed, the Franchise shall remain in full force and affect while said appeal is pending, unless the term of the Franchise sooner expires.

2. Reservation of Rights. City and Grantee reserve all rights that they may possess under Applicable Laws unless expressly waived herein.

SECTION 9. MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be done in accordance with Applicable Laws and regulations.

2. Work Performed by Others. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise. This requirement strictly applies to Cable Service and shall not apply to the telephone plant of Grantee or any of its affiliated companies.

3. Amendment of Franchise Agreement. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 10.6 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 Applicable Laws. City shall act pursuant to local law pertaining to the ordinance amendment process.

4. City of Rushford Contact. The City of Rushford will provide Grantee with a contact number and name at the City Rushford for customers who may have questions regarding the City's Franchise Fees and Access Fees. Grantee may upon its own decision use such information when announcing new or changes to Franchise Fees and Access Support Fees to customers.

5. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Grantee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, programmer/contract disputes, inability of Grantee to obtain access to an individual's property and inability of Grantee to secure all necessary permits or utilize utility poles and conduit so long as Grantee utilizes due diligence to timely obtain said permits.

6. Compliance with Federal, State and Local Laws. If any federal or state law or regulation shall require City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to

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

7. City will not grant an additional franchise for cable service for an area included in an existing franchise on terms and conditions more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public education, or governmental access requirements; or (3) franchise fees. The provisions of this paragraph shall not apply when the area in which the additional franchise is being sought is not actually being served by any existing cable communications system holding a franchise for the area. Nothing in this paragraph prevents the City from imposing additional terms and conditions on any additional franchises. An area for an additional cable franchise is not more favorable or less burdensome if the franchisee is a telephone company, as defined in section 237.01 subdivision 7, and the area of the franchise is no less than the area within the municipality in which the telephone company offers local exchange telephone service. This paragraph is in addition to and not a limit to the authority of a municipality to grant an additional franchise for cable service.

8. Right of Individuals.

a. Grantee shall comply at all times with all other Applicable Laws, relating to nondiscrimination including but not limited to race, color, religion, disability, national origin, age, gender or sexual preference.

b. Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time including 47 U.S.C. Section 551, Protection of Subscriber Privacy.

c. To the extent required by Minnesota Statutes §238.084 Subd. 1(s) Grantee shall comply with the following:

- No signals of a class IV cable communications channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of a Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one year which is renewable at the option of the Subscriber. No penalty may be invoked for a Subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the Subscriber without penalty of any kind. The permission must be required for each type or classification or class IV cable communications activity planned.
- No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to the lists of the names and addresses of the Subscribers or lists that identify the viewing habits of Subscribers may be sold or otherwise made available to any Person other than to Grantee and its employees for internal business use, or to the Subscriber who is the subject of that information, unless the Grantee has received specific written authorization from the Subscriber to make the data available.

- Written permission from the Subscriber must 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 this information is subject to paragraph (i) above.
- For purposes of this Section, a “class IV cable communications channel” means a signaling path provided by a System to transmit signals of any type from a Subscriber terminal to another point in the System.

SECTION 10. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication; Effective Date. This Franchise shall be published in accordance with applicable Minnesota law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 11.2.

2. Summary Approved. The Council hereby determines that the text of the summary of this ordinance marked “Official Summary of Ordinance A100.01”, and a copy of which is attached to this ordinance, clearly informs the public of the intent and effect of this ordinance. The Council further determines that publication of the title and this summary will clearly inform the public of the intent and the effect of this ordinance. The City Clerk shall file a copy of this ordinance and the summary in the City Clerk’s office which shall be available for inspection by any person during regular office hours.

3. Acceptance.

a. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.

b. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

c. Grantee shall accept this Franchise in the following manner:

This Franchise will be properly executed and acknowledged by Grantee and delivered to City. With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not previously been delivered.

Passed and adopted this 12th day of August, 2019.

Passed and adopted this 12th day of August, 2019.

ATTEST:

CITY OF RUSHFORD, MINNESOTA

By: Kathy Zacher

By: Chris

Its: Kathy Zacher City Clerk/Treas.

Its: Chris Hallum, Mayor

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

ACE TELEPHONE ASSOCIATION
D/B/A ACEN TEK

Dated: 8/21, 2019

By: TODD ROESLER

Its: CEO

**EXHIBIT A
SERVICE TO PUBLIC BUILDINGS**

<u>LOCATION</u>	<u>ADDRESS</u>
<u>Rushford City Hall</u>	<u>101 North Mill Street, Rushford, MN 55971</u>
<u>Rushford Police Department</u>	<u>405 S. Elm Street, Rushford, MN 55971</u>
<u>Rushford-Peterson Public School</u>	<u>1000 Pine Meadows Lane, Rushford, MN 55971</u>
<u>Rushford Fire Department</u>	<u>407 S. Elm Street, Rushford, MN 55971</u>