

**TOWN OF FAYAL**  
**St. Louis County, Minnesota**

**ORDINANCE NO. 98-4**

AN ORDINANCE GRANTING A FRANCHISE TO CABLE SYSTEMS MANAGEMENT OF IOWA, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWN OF FAYAL; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

The Town Board of the Town of Fayal ordains:

**STATEMENT OF INTENT AND PURPOSE**

The Town intends, by the adoption of the Franchise, to bring about the development of a Cable Communications System and the continued operation of it. Such a development can contribute significantly to the communication needs and desires of many. Further, the Town may achieve better utilization and improvement of public services with the development and operation of a Cable Communications System.

Past studies by the Town have led the way for organizing a means of procuring and securing of Cable Communications system which, in the judgment of the Town Board, is best suited to the Town. This has resulted in the preparation and adoption of this Franchise.

**FINDINGS**

In the review of the proposal and application of Cable Systems Management of Iowa, Inc. ("Grantee"), the Town Board makes the following findings:

- A. The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding;
- B. Grantee's plans for constructing, upgrading, and operating the System were considered and found adequate and feasible;
- C. The Franchise granted to Grantee by the Town complies with the existing applicable Minnesota Statutes, federal laws and regulations; and
- D. The Franchise granted to Grantee is nonexclusive.

**SECTION 1.**

## SHORT TITLE AND DEFINITIONS

1.1. Short Title. This Franchise Ordinance shall be known and cited as Town of Fayal Ordinance 98-4.

1.2. Definitions. For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not consistent 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. "Basic Cable Service" means any service tier, which includes the lawful retransmission of local television broadcast signals, and any public, educational and governmental access programming required by the franchise to be carried on the basic service tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7) (1993).

B. "Town" means Town of Fayal, an urban Township under Minnesota Statutes Chapter 368, in the State of Minnesota, acting by and through its Town Board.

C. "Town Board" means the Board of Supervisors of the Town Fayal, St. Louis County, Minnesota.

D. "Cable Communications Service" or "System" means a system of antennas, cables, wires, lines, towers, waveguides or other conductors, converters, equipment or facilities located in Town and designed and constructed for the purpose of producing, receiving, transmitting, amplifying or distributing audio, video and other forms of electronic signals in Town. System as defined herein shall not be inconsistent with the definition as set forth in Minn. Stat. §238.02, subd. 3 (1990) and 47 U.S.C. § 522 (6) (1989).

E. "Cable Programming Service" means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

- (1) Video programming carried on the Basic Service Tier;
- (2) Video programming offered on a pay-per-channel or pay-per-program basis; or
- (3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:

- (I) Consists of commonly-identified video programming; and
- (ii) Is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543 (1) (2) (1993) and 47 C.F.R. 76.901(b) (1993).

- F.** "Cable Television Service" means the provision of television perception, communications and/or entertainment services for direct or indirect compensation, on or as otherwise provided by this ordinance, and distributing the same over a Cable Communications System.
- G.** "Class IV Cable Communications Channel" means a signaling path provided by a Cable Communications System to transmit signals of any type from a Subscriber terminal to another point in the System.
- H.** "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 include in the service.
- I.** "Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.
- J.** "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- K.** "Grantee" is Cable Systems Management of Iowa, Inc., its agents, employees, lawful successors, transferees or assignees.
- L.** "Gross Revenues" means compensation received directly by the Grantee from the operation of its System with Town, limited to sums received from subscribers for Basic Cable Service fees, and Cable Programming Service fees. Gross Revenues shall not include franchise fees or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- M.** "Installation" means the connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.
- N.** "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which, inhibits the viewing of a certain program, certain channel or certain channels provided by way of the Cable Communications System.
- O.** "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.
- P.** "Person" is any person, firm, partnership, association, corporation, company or other legal entity.
- Q.** "Standard Installation" means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.

- R.** "Street" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway or drive, or any easement or right-of-way now or hereafter held by the Town.
- S.** "Subscriber" means any Person who lawfully receives Cable Television Service. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.
- T.** "Unlawful" means a misdemeanor punishable by ninety (90) days in jail or \$700.00 or both. Said violation shall apply each day to each customer served. Unlawful conduct shall also allow the Town to take any cause of action it may have against any Person in violation of the terms of this Franchise.

## **SECTION 2.**

### **GRANT OF AUTHORITY AND GENERAL PROVISIONS**

- 2.1.** Franchise Required. It shall be unlawful for any person to construct, operate or maintain a Cable Communications System in the Town unless such person or the person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise granted pursuant to this Ordinance. It shall also be unlawful for any person to provide Cable Television Service in the Town unless such person shall have first obtained and currently hold a valid Franchise granted pursuant to the provisions of this Ordinance. All Franchises granted by the Town pursuant to this Ordinance shall contain the same substantive terms and conditions.
- 2.2.** Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules and regulations.
- 2.3.** 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 Town, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in Town of a Cable Communications System as herein defined. The Cable Communications System constructed and maintained by Grantee or its agents shall not interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to Grantee to the extent it is technically and economically feasible to do so.

- B. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if Town 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. The Town shall also have the right to review and approve of any proposed underground additions to Grantee's system.
- C. This Franchise shall be nonexclusive, and Town reserves the right to grant a similar use of said Streets, alleys, public ways and places, to any Person at any time during the period of this Franchise, provided, however, that any additional Franchise grants shall be under the same substantive terms and conditions as this Franchise.
- D. Grantee shall have the authority to use Town easements, public rights-of-way, Streets and other conduits for the distribution of Grantee's System. The Town 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.

2.4. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless renewed, revoked or terminated sooner as herein provided.

2.5. Previous Ordinances and Franchises. This Ordinance shall supersede and replace all previous Ordinances, Resolutions and/or Agreements and attachments or extensions thereto that grant a Franchise to any Grantee to own, operate and maintain a Cable Television System within the Town of Fayal. The singular exception to this repealer shall be Fayal Township Ordinance 94-2 "An Ordinance Granting a Communications System Permit to Northland Cable Partners, d.b.a Northland Cablevision" adopted 15 November 1994 and any amendments, extensions, or attachments thereto. Fayal Township Ordinance 94-2 shall remain in full force and effect. The prior "Cable Television Agreement" dated 1 September 1989 naming Mid-North 1 Cablesystems and any attachments, amendments, or extensions thereto, is hereby expressly repealed.

2.6. Compliance with Applicable Laws, Resolutions and Ordinances. The Grantee shall at all times during the life of this Franchise be subject to all lawful exercise of the police power and the right of eminent domain by the Town. This Franchise shall comply with the Minnesota franchise standards contained in Minn. Stat. § 238.01 et seq.

2.7. Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its businesses as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise 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, the Town or any other body having lawful jurisdiction thereof.

2.8 Territorial Area Involved. This Franchise is granted for the corporate boundaries of the Town, as it exists from time to time. In the event of annexation by the Town, 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 of forty (40) homes per cable mile. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas.

2.9) Written 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 Grantee or Town's Clerk of this Franchise 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 Town:

Attention:

Fayal Township Clerk

3600 Shady Lane

Eveleth, MN 55734

If to Grantee:

President

Cable Systems Management of Iowa, Inc.

3600 Kennebec Drive

Eagan, MN 55122

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

### **SECTION 3.**

#### **CONSTRUCTION STANDARDS**

3.1 Construction Standards. If the System, or subsequent rebuilds or extensions, proposed for the Franchise area consist of fewer than one hundred (100) plant miles of cable;

- A. Within ninety (90) days of the granting of the Franchise, the Grantee shall apply for the necessary governmental permits, licenses, certificates, and authorizations;

- B. The energized trunk cable must be extended substantially throughout the authorized area within one (1) year after receipt of the necessary governmental permits, licenses, certificates and authorizations and the Persons along the route of the energized cable shall have individual Drops as desired during the same period of time; and
- C. The above-stated requirements may be waived by the Town only upon occurrence of acts beyond the reasonable control of Grantee or acts of God.

3.2 Construction Codes and Permits.

- A. Grantee shall obtain all necessary permits from the Town before commencing, any construction or extension of the System, including the opening or disturbance of any street, or private or public property within the Town. Grantee shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in the Town and give due consideration at all times to the aesthetics of the property.
- B. The Town shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

3.3. Repair of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as approved by the Town in the case of Streets and other public property.

3.4. Conditions on Street Use.

- A. Nothing in this Franchise shall be construed to prevent the Town from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering, any Street; constructing, laying down, repairing, maintaining, or relocating any water mains; or constructing, maintaining, relocating or repairing any sidewalk or other public work.
- B. All System transmission and distribution structures, lines and equipment erected by the Grantee within the Town shall be located so as not to obstruct or interfere with the proper use of Streets, alleys and other public ways or

places, and to cause minimum interference with the rights of property owners who abut to any of the said Streets, alleys and other public ways and places, and not to interfere with existing public utility installations. The Grantee shall furnish to and file with the Town Clerk the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities and Grantee shall file with the Town updates of such maps, plats and permanent records annually if changes have been made in the System.

- C. If at any time during the period of this Franchise the Town shall elect to alter or change the grade or location of any Street, alley or other public way, the Grantee shall, upon reasonable notice by the Town, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance will comply with the standards and specifications of the Town.
- D. The Grantee shall not place poles, conduits or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Street shall be so placed as to comply with all requirements of the Town.
- E. The Grantee shall, on request of any Person holding a moving permit issued by the Town, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
- F. The Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks or public easements of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.
- G. Nothing contained in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

### 3.5. Undergrounding of Cable.

- A. In all areas of the Town where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of size and design and shall be so located as to not be unsightly or unsafe.
- B. In any area of the Town where there are certain cables, wires and other like facilities of a public utility district underground and at least one operable cable,



wire or like facility of a public utility or public utility district suspended above the ground from poles Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

- C. Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by the Town or new developments.

3.6. Erection, Removal and Joint Use of Poles. No poles, conduits or other wire-holding structures shall be erected or installed by the Grantee without prior approval of the Town with regard to location, height, type and other pertinent aspects.

3.7 Safety Requirements.

- A. Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- B. The Grantee shall install and maintain its System wires, cables, fixtures and other equipment in accordance with the requirements of the National Electric Safety Code and all FCC, state and local regulations, and in such manner that they will not interfere with any installations of the Town or of any public utility serving the Town.
- C. All System structures and all System lines, equipment and connections in, over, under and upon the Streets, sidewalks, alleys and public ways and places of the Town, wherever situated or located, shall at all times be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of any Person.

## SECTION 4.

### DESIGN PROVISIONS

4.1. Minimum Channel Capacity. Grantee shall provide a System which is capable of delivering 53 channels, 12 channels shall be initially activated. All programming decisions remain the sole discretion of Grantee provided that Grantee notifies Town and Subscribers in writing thirty (30) days prior to any channel additions, deletions or realignments.

4.2. Operation and Maintenance of System. The Grantee shall render effective service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice and shall occur during periods of minimum use of the System.

- 4.3. 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 contained in Subpart K of Part 76 of the Federal Communications Commissions rules and regulations and found in Federal Regulations, Title 47, Section 76.601 to 76.617, which regulations are expressly incorporated herein by reference.
- 4.4. Special Testing. The Town may request special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Request for such special tests shall be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance. Such tests shall be limited to the particular matter in controversy. The Town shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The Town shall meet with Grantee prior to requesting special tests to discuss the need for such and, if possible, visually inspect those locations, which are the focus of concern. If, after such meetings and inspections, the Town wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy, the tests shall be conducted by a qualified engineer selected by the Town. In the event that special testing is required by the Town to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the difficulties to be caused by factors which are within the Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond the Grantee's reasonable control then the cost of said test shall be borne by the Town.
- 4.5. FCC Reports. The results of tests required to be filed by Grantee with the FCC shall also be copied to the Town upon request by the Town.
- 4.6. Nonvoice Return Capability. Grantee is required to use cable having the technical capacity for nonvoice return communications.
- 4.7. Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

## **SECTION 5.**

### **SERVICES PROVISIONS**

- 5.1. Regulation of Service Rates.
- A. The Town may regulate rates for the provision of cable service, equipment or any other communications service provided over the System to the extent allowed under federal or state law(s). In exercising its jurisdiction to regulate any such rates, Town will adhere to regulations adopted by the Federal Communications Commission at 47 C.F.R., §76.900 et seq.

- B. A list of Grantee's current programming lineup, Subscriber rates and charges shall be maintained on file with Town and attached hereto as Exhibit 1 and shall be available for public inspection. Grantee shall give Town and Subscribers written notice and explanation of any change in a rate or charge no less than sixty (60) days prior to the effective date of the change.
- C. In the event that the Town elects to exercise its jurisdiction over rates charged for cable services, equipment or any other communications service, it shall, after notice, hold a public hearing for the considerations of view of interested parties with respect to initial rates filed and any subsequent proposed changes in rates charged for Basic Cable Service or equipment.

5.2. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing its cable television services within the Town. Grantee shall have the right to market its cable services in accordance with the Town's ordinances regulating solicitors and peddlers.

5.3. Subscriber Inquiry and Complaint Procedures.

- A. Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis.
- B. Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries.
- C. Subscriber requests for repairs shall be performed, to the extent possible, within twenty-four (24) hours of the request.
- D. Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), Town and Grantee shall, upon written request, prepare and maintain written records of all complaints made to them and the resolution of such complaints, including date of such resolution. Grantee shall, upon written request, provide Town with a written summary of such complaints and their resolution at least once per year.

5.4. Subscriber Contracts. Grantee shall submit any Subscriber contract utilized to the Town. If no written contract exists, Grantee shall file with the Town Clerk a document completely and concisely stating the terms of the residential Subscriber contract offered to customers, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during normal business hours.

5.5. 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.

## SECTION 6.

### PUBLIC ACCESS PROVISIONS

- 6.1. Public, Educational and Government Access. Grantee shall provide to each of its Subscribers who receive all, or part of, the total services offered on the System, reception on at least one (1) specially designated access channel. The specially designated access channel may be used by local education authorities and local government on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by local educational authorities, or local government, the Grantee shall lease time to commercial and noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. The Grantee may also use the specially designated access channel for local origination during those hours when the channel is not in use by local educational authorities, local government or commercial or noncommercial users who have leased time. The VHF spectrum must be used for the specially designated access channel required in the section.
- 6.2. Charges for Use. Channel time and playback of prerecorded programming on the specially designated access channel must be provided without charge to the general public, except that personnel, equipment and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for production costs must be consistent with the goal of affording the public a low cost means of television access.
- 6.3. Access Rules. Grantee shall establish rules for use of any specially designated access channel. The initial access rules and any amendments thereto shall be maintained on file with the Town and available for public inspection during normal business hours.

## SECTION 7

### OPERATIONS AND ADMINISTRATION PROVISIONS

- 7.1. Franchise Fee.
- A. Grantee hereby agrees to collect and pay to the Town an annual amount of five percent (5%) of its annual Gross Revenues.
  - B. Payments due the Town under this provision shall be payable annually. The payment shall be made within ninety (90) days of the end of each calendar quarter together with a brief report showing the basis for computation.
  - C. All amounts paid shall be subject to audit and recomputation by the Town.

7.2. Access to Records. The Town shall have the right to inspect, upon reasonable notice, at any time during normal business hours, those records maintained by Grantee which relate to System operations and to Gross Revenues, subject to the privacy provisions of 47 U.S.C. § 571 et. seq. ("Cable Act"). The Grantee shall also provide to Town on a monthly basis "aged trial account balances" for the sole purpose of allowing the Town to verify the accuracy of the Franchise Fee payments required by Section 7.1 (A). Grantee and Town shall at all times comply with all applicable subscriber privacy laws and regulations with respect to Grantee's system information.

7.3. Public Hearings. The Grantee shall attend any annual public hearing called by the Town at which complaints and concerns of the citizens of the Town may be heard regarding Grantee's cable television service.

## **SECTION 8.**

### **GENERAL FINANCIAL AND INSURANCE PROVISIONS**

#### **8.1. Indemnification of the Town.**

- A. The Town, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System.
- B. Grantee shall indemnify, defend and hold harmless the Town, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability damages, and penalties which they may legally be required to pay as a result of the exercise of the franchise, except claims because of Town's own programming.
- C. Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injury to the Grantee's facilities while performing work connected with grading, regarding or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system. Town shall be liable for negligent acts by the Town, its officers, boards, commissions, committees, elected officials, employees and agents.
- D. In order for the Town to assert its rights to be indemnified, defended and held harmless, the Town must with respect to each claim:
  - 1. Promptly notify Grantee in writing of any claim or legal proceeding in order to be indemnified, defended, and held harmless;

2. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
3. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Paragraph Two (2) above.

8.2. Insurance.

- A. As a part of the indemnification provided in Section 8.3, but without limiting the foregoing, Grantee shall file with its acceptance, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of the Town in its capacity as such, its officers, elected officials, boards, commissions, agents and employees. The policy or policies shall name as additional insured the Town, and their capacity as such, their officers, agents and employees. The policies shall be in the sum of not less than Three Hundred Thousand Dollars (\$300, 000) for personal injury or death of any one person, and One Million Dollars (\$1,000,000) for personal injury or death of two or more Persons in any occurrence, Three Hundred Thousand Dollars (\$300,000) for property damage to any one person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.
- B. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after thirty (30) days advance written notice has been provided to the Town.

**SECTION 9.**

**SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE**

9.1. Town's Right to Revoke.

- A. In addition to all other rights which the Town has pursuant to law or equity, the Town reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required by § 9.2B herein, it is determined that:
  1. Grantee has violated any material provision of this Franchise; or
  2. Grantee has attempted to evade any of the material provisions of the Franchise; or

3. Grantee has practiced fraud or deceit upon the Town or Subscriber.
- B. Town may revoke this Franchise without the hearing required by §9.2B herein if Grantee is adjudged a bankrupt.

9.2. Procedures of Revocation.

- A. The Town shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent from receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. Together with the notice herein required, the Town shall provide Grantee with written findings of fact which are the basis of the revocation.
- B. Grantee shall be provided with the right to a public hearing affording due process before the Town Board prior to revocation, which public hearing shall follow the sixty (60) day notice provided in Paragraph A above. The Town shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- C. After the public hearing, and upon written determination by the Town to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.

During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.

- E. Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.

9.3. Abandonment of Service. Grantee may not abandon the System or any portion thereof without have first given three (3) months written notice to the Town. Grantee may not abandon the System any portion thereof without compensating the Town for damages resulting from the abandonment.

9.4. Removal After Termination or Forfeiture.

- A. In the event of termination or forfeiture of the Franchise, the Town shall have the right to require Grantee to remove all or any portion of the System from all Streets and public property within the Town.
- B. If Grantee has failed to commence removal of System, or such part thereof as was designated by Town, within one hundred twenty (120) days after written notice of Town's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) month after written notice of

Town's demand for removal is given, Town shall have the right to declare all right, title and interest to the System to be in Town with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. 547 (1989).

9.5. Sale or Transfer of Franchise.

- A. No sale, transfer, or "fundamental corporate change" as defined in Minnesota Statutes, Section 238.083, of this Franchise shall take place until parties to the sale, transfer or fundamental corporate change files a written request with the Town for its 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.
- B. The Town shall have thirty (30) days from the time of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse affect on Grantee's Subscribers resulting from the sale or transfer. Such approval or determination shall be expressed by Town Resolution within thirty (30) days of receipt of said request, or the request shall be deemed approved as a matter of law.
- C. If a public hearing is deemed necessary pursuant to (B) above, such hearing shall be commenced within thirty (30) days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) days prior to bearing by publishing notice thereof once in a newspaper of general circulation in the Town. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the Town. Said hearing may be continued with the consent of Grantee.
- D. Within thirty (30) days after the closing of the public hearing, the Town shall approve or deny in writing the sale or transfer request. Town shall set forth in writing with particularity its reason(s) for denying approval. The Town shall not unreasonably withhold its approval.
- E. The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest.
- F. 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 9.5. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- G. In no event shall a transfer or assignment of ownership or control be approved



without the transferee becoming a signatory to this Franchise.

- H. In the event of any proposed sale or assignment pursuant to Paragraph A of this Section, the Town shall have the right of first refusal of any bona fide offer to purchase the System. Bona fide offer, as used in this Section, means an offer received by the Grantee which it intends to accept subject to the Town's rights under this Section. This written offer must be conveyed to the Town along with the Grantee's written acceptance of the offer contingent upon the rights of the Town provided for in this Section.
- I. Town shall be deemed to have waived its rights under this Section in the following circumstances:
  - 1. If it does not indicate to Grantee in writing, within 30 days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or
  - 2. It approves the assignment or sale of the Franchise as provided within this Section.

## SECTION 10.

### PROTECTION OF INDIVIDUAL RIGHTS

10.1. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex or age. Grantee shall comply at all times with all other applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.

10.2. Subscriber Privacy.

- A. No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for the purposes of monitoring viewing patterns or practices without the express written permission of the Subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year, which shall be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

- B. No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, or any other means, including but not limited to lists of the names and addresses of such Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available.
- C. Written permission from the Subscribers 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 Paragraph B of this Section.

## SECTION 11.

### UNAUTHORIZED CONNECTION AND MODIFICATIONS

- 11.1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation or governmental body or agency, without the express consent of the Grantee, to make or possess or assist anybody in making or possessing, any connection extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System.
- 11.2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or government body or agency to willfully interfere, tamper, remove, obstruct or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.
- 11.3. Penalty. Any firm, Person, group, company, corporation or government body or agency found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and no more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

## SECTION 12.

### MISCELLANEOUS PROVISIONS

- 12.1. Franchise Renewal. Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.
- 12.2. 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 Town of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

12.3. Amendment of Franchise Ordinance. Grantee and Town may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 12.7 or at any other time if Town and Grantee agree that such an amendment will be in public interest or if such an amendment is required due to changes in federal, state or local laws. Town shall act pursuant to local law pertaining to the ordinance amendment process.

12.4. Compliance with Federal, State and Local Laws.

- A. If any federal or state law or regulation shall require or permit Town or Grantee to perform any service or act or shall prohibit Town 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 Town shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
- B. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the Town.

12.5. Nonenforcement by Town. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the Town to enforce prompt compliance. Any waiver by the Town of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

12.6. Administration of Franchise. The Town Clerk or other Town designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The Town may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.

12.7. Rights Cumulative. All rights and remedies given to Town by this Franchise shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the Town, 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 Town and the exercise of one or more rights and remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

12.8 Grantee Acknowledgment 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 Town has the power to make the terms and conditions contained in this Franchise.

### **SECTION 13.**

#### **PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

13.1. 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 13.2.

13.2. Acceptance.

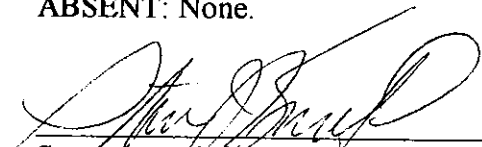
- A. Grantee shall accept this Franchise by 1 January 1998, unless the time for acceptance is extended by the Town. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously 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:
  1. This Franchise will be properly executed and acknowledged by Grantee and delivered to Town.
  2. Grantee shall have continuing responsibility for this Franchise, and if Grantee be a subsidiary or wholly-owned entity of a parent corporation, performance of this Franchise shall be secured by a written guarantee of the parent corporation in a form and substance acceptable by Town, which shall be delivered with the executed Franchise.

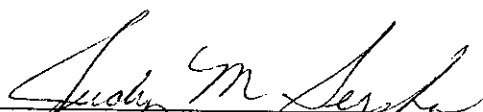
Adoption of the foregoing Ordinance was moved by Supervisor Tamaro seconded by Supervisor Ojanpa and it was adopted this 15 day of December, 1998 on the following vote:

AYES: Kniefel, Tamaro, Ojanpa, Turner, Bratt

NAYS: None

ABSENT: None.

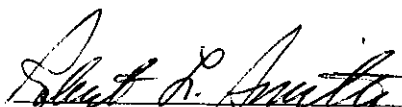
  
\_\_\_\_\_  
Steven J. Kniefel, Chairman  
TOWN OF FAYAL, MINNESOTA

  
\_\_\_\_\_  
Judy M. Sersha, Clerk  
TOWN OF FAYAL, MINNESOTA

ACCEPTED: This Ordinance and Franchise Agreement, (Fayal Ordinance 98-4 adopted 15 December 1998) is accepted and we agree to be bound by its terms and conditions.

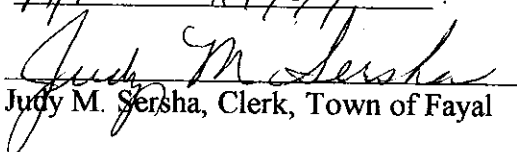
Cable Systems Management of Iowa, Inc.

Dated: 2-25-99

By:   
\_\_\_\_\_

Its: President

Summary of Ordinance 98-4 was published in the Mesabi Daily News according to law on

April 27, 1999  
  
\_\_\_\_\_  
Judy M. Sersha, Clerk, Town of Fayal

STATE OF MINNESOTA)
)ss
COUNTY OF ST. LOUIS)

Eileen Rioux, being duly sworn, on oath says that he/she is the publisher or authorized agent and employee of the publisher of the newspaper known as Mesabi Daily News, and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualification as a qualified newspaper, as provided by Minnesota Statute 331A.02, 331A.07, and other applicable laws, as amended.

(B) The printed Town of Fayal Ordinance #98-4

which is attached was cut from the column the 27th day of April, 1999; hereby acknowledged as being the size a

BY: Eileen Rioux

\* ALPHABET SHOULD BE IN THE SAME

(1) Lowest classified rate paid by commercial users for comparable space

(2) Maximum rate allowed by law for the above matter

(3) Rate actually charged for the above matter

TOWN OF FAYAL
ST. LOUIS COUNTY, MINNESOTA
SUMMARY OF AN ORDINANCE
GRANTING A FRANCHISE TO CABLE SYSTEMS MANAGEMENT OF IOWA, INC.
ORDINANCE CHANGE
The Town Board of Fayal has adopted a replacement cable franchise ordinance replacing the existing franchise ordinance pertaining to Regional Cable TV, predecessor in interest to Cable Systems Management of Iowa, Inc. This Ordinance permits Cable Systems Management of Iowa, Inc. to construct, operate, and maintain a cable television system in the Town of Fayal subject to the terms and conditions of said Ordinance.
NOTICE
By action of the Town Board, the following summary of Ordinance Number 98-4 for the Town of Fayal has been prepared for purposes of publication. The ordinance in its entirety, as well as other documentation can be reviewed at the office of the Fayal Township Clerk, 3000 Shady Lane, Eveleth, MN 55734 and at the Trent Law Firm in Virginia, MN 55792 during regular office hours and is on file with the St. Louis County Law Library, 515 Court House, Duluth, MN 55802
ORDINANCE SUMMARY
Section 1. Short Title and Definitions.
Section 2. This section requires a franchise for any person to operate a cable communications system in the town. It grants a nonexclusive cable franchise for fifteen years within the town which replaces the previous franchise.
Section 3. This section sets forth construction standards for rebuilds or extensions within the town including the issuance of permits, inspection, repair of streets and property.
Section 4. Design provisions. The system is required to be capable of delivering 33 channels and requires 30 days written notice of additions, deletions or realignment of cable channels.
Section 5. Services Provisions. The Town may regulate rates consistent with FCC regulations. The grantee is required to establish a subscriber inquiry and complaint procedure.
Section 6. Public Access Provisions. Requires at least one public access channel to be available for local education or government authorities on a non-discriminatory basis.
Section 7. Fees. Provides for payment of an annual fee of 5% of gross revenues.
Section 8. Indemnification and Insurance. Provides indemnification to the Town and its agent concerning claims arising from the operation of the cable system. Further requires insurance policies protecting the town in amounts of \$300,000/\$1,000,000.
Section 9. Revocation of Franchise. Establishes grounds and procedures for the revocation of the cable franchise. Provides notification and procedural requirements in the event of sale or transfer of the franchise. Further provides the Town with a right of first refusal in the event of sale or assignment.
Section 10. Protection of Individual Rights. Bans discrimination in service and access. Provides privacy protection to subscribers.
Section 11. Prohibits unauthorized connections and modifications to the system and establishes a fine for violations.
Section 12. Miscellaneous provisions.
Section 13. The franchise is effective upon acceptance of by the franchisee of this ordinance which was December 15, 1998. Requires publication of the ordinance consistent with the law. The text of this ordinance summary was approved by at least a four-fifths majority of the Fayal Town board on April 20, 1999 based on its finding that the summary informs the public of the intent and effect of the ordinance.
Kniefel moved the approval of the foregoing summary, seconded by Tammaro and it was passed and adopted by the Board of Supervisors, the Town of Fayal, State of Minnesota on the 20th day of April, 1999 by the following vote:
Ayes: Kniefel, Tammaro, Turner, Ojanpa
Nays: none
Absent: Bratt
Attest:

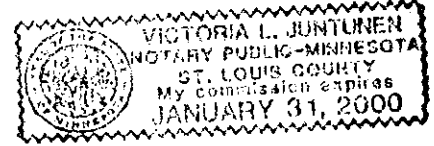
Judy M. Senha
Clerk of Fayal

published one time; it was published on Tuesday case alphabet from A to Z, both inclusive, which is publication of the notice.

Victoria L. Juntunen

Subscribed and sworn to before me on this 27th day of April, 1999.

Notary Public



\$11.55
Line, word, or inch rate)

11.55
Line, word, or inch rate)

9.90
Line, word, or inch rate)

RECEIVED
MAY 5 1999
TOWN OF FAYAL

**TOWN OF FAYAL  
ST. LOUIS COUNTY, MINNESOTA  
SUMMARY OF ORDINANCE NUMBER 98-4  
AN ORDINANCE GRANTING A FRANCHISE TO CABLE SYSTEMS MANAGEMENT  
OF IOWA, INC.**

**ORDINANCE CHANGE**

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Kniel moved the approval of the foregoing summary, seconded by Tammaro and it was passed and adopted by the Board of Supervisors, the Town of Fayal, State of Minnesota on the 20th day of April, 1999 by the following vote:

Ayes: *Kniel, Tammaro, Turner, Ojanpa*

Nays: *none*

Absent: *Bratt*

Attest:

*Judy M. Sersha*  
Judy M. Sersha  
Clerk of Fayal