

repealed 1996-1

1985-2

ORDINANCE NO. ~~1985-2~~ 1985-2

An Ordinance Granting a Cable Communications Franchise in Brownsdale and Rules
Governing the Operation of Same.

THE CITY COUNCIL OF THE CITY OF BROWNSDALE ORDAINS AS FOLLOWS:

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SECTION 1: DEFINITIONS: For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (A) "Board" is the Minnesota Cable Communications Board.
- (B) "Franchisor" is the City of Brownsdale.
- (C) "Franchisee" is Tri-Cable, Inc.
- (D) "FCC" is the Federal Communications Commission of the United States.
- (E) "Class IV 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 cable communications system.
- (F) "Non-voice return communications" means the provisions of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.
- (G) The word "shall" is mandatory.
- (H) The word "may" is permissive.
- (I) "City" is the City of Brownsdale, Minnesota, as its boundaries now exist and as they may hereafter be changed.
- (J) "Council" is the City Council of the City of Brownsdale, Minnesota.
- (K) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (L) "Community Television System" includes, but is not limited to, Cable Television, CATV and Community Antenna Television and encompasses a system for the interception, sale and distribution of television signals and for the purpose of transmitting VHF and FM signals and television pictures and sound originating on the Company's premises, and including a system capable of delivering a broad spectrum of electronic services beyond the former traditional service.(CATV).

SECTION 2: GRANT OF AUTHORITY: The City Council of Brownsdale, ordains that a cable communication franchise for the installation, operation and maintenance of a cable communications system within the corporate limits of the City of Brownsdale, is granted to the franchisee, provided, however, that said franchisee shall be subject to the following terms and performance conditions.

SECTION 3: COMPLIANCE WITH MINNESOTA CABLE COMMUNICATIONS BOARD'S FRANCHISE STANDARDS: The franchise shall at all times be in compliance with the rules of the Minnesota Cable Communications Board.

SECTION 4: COMPLIANCE WITH STATE AND FEDERAL LAWS: The franchisee and the franchising authority shall conform to all state laws and rules regarding cable communications not later than one (1) year after they become effective unless otherwise stated and to all federal laws and regulations regarding cable as they become effective.

SECTION 5: CERTIFICATE OF CONFIRMATION: The franchise shall cease to be of any force and effect if the franchisee fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the Board, provided, however, that the franchisee may operate his cable communications system while the Board is considering the application for the renewal of his certificate of confirmation.

SECTION 6: FRANCHISE TERMS: The term date of this franchise ordinance is January 7, 2000, and any future renewal term, if after public procedure, and if granted by the franchise authority, shall be limited to not more that fifteen (15) years.

SECTION 7: RENEGOTIATION OF FRANCHISE TERMS: Renegotiation between the franchisor and franchisee shall occur one (1) year before the end of the franchise term unless franchising authority determines not to reissue the franchise to the franchisee or desire to consider additional applicants for a franchise.

SECTION 8: FRANCHISE EXCLUSIVITY: This franchise agreement is non-exclusive.

SECTION 9: SALE OR TRANSFER OF THE FRANCHISE, SALE OR TRANSFER OF STOCK: Sale or transfer of this franchise or sale or transfer of stock so as to create a new controlling interest is prohibited except at the approval of the franchising authority which approval shall not be unreasonably withheld, and that such sale or transfer is completed pursuant to Board rules, Chapter 12.

SECTION 10: ACCESS TO FINANCIAL RECORDS: The franchising authority is granted the authority to audit the franchisee's accounting and financial records upon reasonable notice. The franchisee shall file with the franchising authority annually, reports of gross subscriber revenues and other information as the franchising authority deems appropriate.

SECTION 11: RATES AND RATE CHANGE PROCEDURE SUBSCRIBER RATES:

(A) Term of Subscriber Contracts

Residential subscriber contracts shall not exceed twelve months in duration, unless after twelve months, the contract may be terminated by the subscriber at any time at his/her option with no penalty to the subscriber.

(B) Subscriber Rates

The rates and changes for the signals distributed or transmitted hereunder shall be fair and reasonable and no higher than necessary to meet all costs of service including a fair return on the investment. By its acceptance of this franchise, the franchisee specifically grants and agrees that its rates and charges to its subscribers for television and radio signals shall be fair and equitable. The franchisee's rates and charges are as follows:

Residential Rates:

Type of Service	Regular Rate
Basic Cable Fee	\$ 9.95
Tier I	19.90
Tier II	27.85
Installation	24.95
Move Connect	12.00
Initial Additional Outlet	8.50
Later Additional Outlet	14.50
Monthly Outlet Charge	1.50
Convertor (2nd)	2.00
Reconnection	12.00
Parental Lock	1.25
Tier Changes	15.00

During the first 30 days of operation one half of the installation charges will be waived by Franchisee.

(C) Commercial:

Commercial rates will be provided on an individual basis and should be negotiated with Franchisee. The rate will depend on the demand within that unit and the ease of installation and servicing, and the consistency of subscription within the unit.

There shall be no increase in installation and monthly service charges for two (2) years after commencement of service.

(D) Rate Determination:

The determination of rates to be charged by the franchisee shall be made if possible, by direct negotiations between the franchisee and the City Council at a public hearing(s). In case of failure to reach an agreement by this method, the City Counsel shall appoint an expert as its representative; the franchisee shall appoint a representative; and these two, by mutual agreement select a third person, preferably an expert in valuation and rate making, who shall together constitute a board of

arbitration. This board shall report its findings as soon as possible and the rate which it shall agree upon by a majority vote shall be the legal rate, subject to revision by any court of competent jurisdiction. The City and the franchisee, may by mutual agreement, revise existing schedules of rates at any time, proceeding in each case as provided for the original fixing of rates. Any changes in rates shall be accomplished by an amendment to this franchise ordinance and shall become effective no sooner than fifteen (15) days from and after its passage.

(E) Rate Specification:

Except as otherwise provided in this section, the rates charged by the franchisee shall be those specified in this franchise ordinance, which may, by amendment hereto, provide for the establishment of reasonable classification of service and categories of subscribers, or specify different rates for differing services or for subscribers in different categories. Such rates may not be changed except as provided herein.

SECTION 12: FRANCHISE ADMINISTRATION: City Clerk or such other person as may be from time to time designated by the City Council, shall be responsible for the continuing administration of this franchise.

SECTION 13: LIABILITY INSURANCE: The franchisee shall indemnify and hold harmless the franchising authority at all times during the term of the franchise and shall maintain throughout the term of the franchise, liability insurance in the amount of five hundred thousand dollars (\$500,000.00), insuring both the franchising authority and the franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the franchise.

SECTION 14: PERFORMANCE BOND: At the time of the franchise becoming effective, and at all times thereafter until the franchise has liquidated all of its obligations with the franchising authority, the authority may require a performance bond, certificate of deposit or any other type of instrument approved by the franchising authority in the amount of ten thousand (\$10,000). This amount is deemed by the franchising authority to be adequate compensation for damages resulting from the franchisee's non-performance. The franchising authority may, from year to year, in its sole discretion, reduce the amount of the performance bond or instrument.

SECTION 15: LIABILITY FOR INJURY TO FRANCHISEE'S FACILITIES: Nothing in this franchise shall relieve any person from liability rising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

SECTION 16: PUBLIC HEARING RE: FRANCHISEE'S CREDENTIALS: The franchisee's technical ability, financial condition and legal qualifications were considered and approved by the franchising authority in a full public proceeding affording reasonable notice and a reasonable opportunity to be heard.

SECTION 17: CHANNEL CAPACITY: The franchisee shall construct a cable system with a channel capacity available for immediate or potential use, equal to a minimum of 400 MHz of bandwidth (the equivalent of 54 television broadcast channels).

SECTION 18: CONSTRUCTION SCHEDULE: Within 30 days of the granting of the franchise, the franchisee shall apply for all necessary permits, licenses, certificates and authorizations; that energized trunk cable shall be extended substantially throughout the authorized area within six (6) months after receipt of all necessary governmental permits, licenses, certificates and authorizations; and that persons along the route of the energized cable will have individual "drops" as desired during the same period of time; and the requirement of this provision may be waived by the franchising authority only upon occurrence of unforeseen events or acts of God.

SECTION 19: AUTHORIZATION TO COMMENCE CONSTRUCTION: The franchisee shall obtain a permit from the proper municipal authority before commencing construction of any communications system, including the opening or disturbance of any street, sidewalk, driveway or public place. If the franchisee fails to meet the conditions of the permit, the franchisor shall be authorized to seek a court order compelling compliance which shall result in the forfeiture of this franchise and all rights contained herein.

SECTION 20: COMPLIANCE WITH APPLICABLE CODES: All wires, conduits, cable and other property and facilities of the franchise shall be located, constructed, installed and maintained in compliance with applicable codes. The franchisee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual customary trade, traffic or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

SECTION 21: RELOCATION OF WIRES, ETC.: Whenever the franchisor shall, during the period of this franchise, undertake any public improvement or authorize any project of action for a public purpose, which affects cable communications equipment, it shall direct the company to remove or relocate its wires, conduits, cables, vaults, pedestals, manholes, poles and other fixtures and property from the area affected by the improvements of project or action for a public purpose at the franchisee's expense upon reasonable notice to the company of the undertaking of such public improvements or project or action for a public purpose by the franchisor.

SECTION 22: TECHNICAL STANDARDS: The rules of the Federal Communications Commission relating to cable communications systems contained in subpart K of Part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems are incorporated by reference. The results of any tests required by the Federal Communications Commission shall be filed within 10 days of the conduct of such tests with the franchising authority and the board.

SECTION 23: SPECIAL TESTING: In the event that special testing is required to determine the source of technical difficulties, the franchisee shall be responsible for the costs of such special testing, if the testing reveals the franchisee to be responsible.

SECTION 24: NON-VOICE RETURN CAPABILITY: The franchise shall provide a cable communications system having the technical capacity for non-voice return communications.

SECTION 25: SUBSCRIBER PRIVACY: No signals of Class IV cable communications channel may be transmitted from a subscriber terminal for the purpose of monitoring individual 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 limited periods 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 revokeable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

(A) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of 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 the company and its employees for internal business use, and also to the subscriber subject of that information, unless the company has received specific written authorization from the subscriber to make such data available.

(B) Written permission from the subscriber shall not be required for the systems conducting system wide of 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 4 MCAR - 4.202 W. 1.

SECTION 26: SUBSCRIBER COMPLAINTS: All complaints by the franchisor, subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the cable communications system shall be investigated by the franchisee. Upon receiving any complaint, the franchisor administrator, or his designated agent, shall investigate the nature of the complaint and shall report the results of his investigation within 30 days after the complaint is received by the City Council. Upon the review of said investigation, the City Council, within 15 days shall provide a resolution to the complaint.

SECTION 27: REPAIRS AND COMPLAINTS: The franchisee shall provide at least a toll-free or collect telephone number for the reception of subscriber complaints and shall maintain a repair service capable of responding to subscriber complaints or request for service within 24 hours after receipt of the complaint or request. Costs included in making repairs, adjustments and installations shall be borne by the franchisee unless the cause for repairs and adjustments are caused by the acts of the subscriber, unless otherwise provided for in this franchise.

SECTION 28: TERMINATION: The franchising authority shall have the right to terminate and cancel the franchise and all rights and privileges of the franchise in the event that the franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the franchising authority. The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of thirty days subsequent to receipt of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee shall have a period of thirty days, beginning the day next following the date of the public hearing at which the termination of the franchise is considered, within which to file an appeal with the Board, pursuant to Minnesota Statutes 238.14. During such thirty day period and until the Board determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof sooner expires. If the Board approves of the action of the municipality, the franchise shall terminate immediately; if the Board disapproves of the action of the municipality, the franchise shall remain in full force and effect during the term thereof unless sooner terminated in accordance with law of these Rules. Any such appeal to the Board is a contested case to which the Board is not a party.

SECTION 29: ABANDONMENT: The franchisee may not abandon any portion of the cable communications service provided hereunder without having given three (3) months prior written notice to the franchising authority and the Board. No cable communications company may abandon any cable communications service or any portion thereof without compensating the franchising authority for damages resulting to it from such abandonment.

SECTION 30: PROCEDURE AFTER TERMINATION OR REVOCATION: Upon the revocation of this franchise by the Council, or at the end of the term of this franchise the franchisor shall have the right to determine whether this franchisee shall continue to operate and maintain its distribution system pending the decision of the franchisor, the franchisee shall, within a reasonable time, remove its cables, wires and appliances from the streets, alleys, and other public places within the City. In the event of the failure of the franchisee to remove its cables, wires and appliances as above required, the franchisor shall have the right to make a written demand on the franchisee to commence the removal of such equipment within thirty (30) days from the date of such demand and to proceed with such removal expeditiously, the franchisor shall have the right to remove the same and to recover the expense of such removal from the franchisee. The franchisor shall also have the right to dispose of any equipment so removed without in any way accounting to the franchisee for the same.

SECTION 31: MUNICIPAL RIGHT TO PURCHASE SYSTEM: If the franchise or cable system is offered for sale, the franchising authority shall have the right to purchase the system.

SECTION 32: ACCESS CHANNELS: The franchisee shall provide to each of its subscribers who receives some or all of the services offered on the system, reception on at least one specially designated access channel. The specially designated access channel may be used by local educational authorities and local government on a first come, first-serve nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government, the franchisee shall lease time to commercial or noncommercial users on a first come, first served nondiscriminatory basis if the demand for that time arises. The franchisee may also use this 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 non-commercial users who have leased time. The VHF spectrum (Channels 2-13) must be used for the specially designated access channel required in 4 MCAR S 4.202 DD.

(A) The franchisee shall establish rules for the administration of the specially designated access channel. The operating rules governing the specially designated access channel shall be filed by the franchisee with the Minnesota Cable Communications Board within 90 days after any access channel is put into use.

(B) Franchisee providing only alarm service or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

SECTION 33: FRANCHISE OF LICENSE FEE: During each of the years subsequent to the effective date of this ordinance, the Franchisee shall pay an annual franchise or license fee of three percent (3%) of the annual gross revenues (basic cable service, premium services and installation costs) of the franchise.

Passed the Brownsdale Council this 7 day of January, 1985

Maurice Foster

MAYOR

Ida Foster

CLERK

Accepted by: Tri Cable Inc.

Larry R. Harbo

PRESIDENT