CHAPTER 11

FRANCHISES

Article 1
Grants of Franchises

11.0101 Grant of Franchise to

1. Definitions. For the purpose of this article, 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. "City" is the city of Thompson, North Dakota.

   b. "Company" is the grantee of rights under this franchise.

   c. "Governing body" is the city council of the city of Thompson, North Dakota.

   d. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

2. Grant. There is hereby granted by the city to the company 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 the city, poles, wires, cables, underground conduits, manholes and fixtures necessary for the maintenance and operation in the city of Thompson. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the city 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.

3. Compliance with Applicable Laws and Ordinances. The company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the city, and to such reasonable regulation as the city shall hereafter by resolution or ordinance provide.

4. Company Liability - Indemnification. The company shall indemnify and save the city and its agents and employees harmless from all and any claims for personal injuries or property damages, and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may arise from the installation and/or operation of said system. For this purpose the company shall carry and at all times maintain of file with the city and at all times keep in force, a public liability policy of insurance, insuring the company and the city against any and all liability of

not less than $50,000.00 property damage, $100,000.00 for any one person, personal injury or death, and $200,000.00 for any one accident resulting in personal injury or death. Such policies of insurance or certificate thereof by a company licensed to do business in the State of North Dakota shall be filed with the city prior to the commencement of such use. The company, upon receipt of due notice in writing from the city, shall defend at its own expense any action or proceeding against the city in which it is claimed that injury or damages arose from the company's activities in the operation of its business.

5. Service Standards. The company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are, or may be set forth by the governing body as provided for in sub-section 11 of this article, or by the Public Service Commission of the State of North Dakota.

6. Company Rules. The company 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 the company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the State of North Dakota.

7. Conditions of Street Occupancy.

   a. Use. All transmission and distribution structures, lines and equipment erected by the company within the city shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

   b. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the company shall, at its own cost and expense and in a manner approved by the city engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of three (3) years.

   c. Relocation. In event that at any time during the period of this franchise the city shall lawfully elect to alter or change the grade of, any street, alley or other public way, the company, upon reasonable notice by the city, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

   d. Placement of Fixtures. The company shall not place poles or other fixtures where the same will interfere with any utility fixture, water hydrant or main, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the

curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways; provided the company will place its poles or fixtures underground when other utility services are so located unless permitted to do otherwise by the city engineer where extreme hardship would result or an underground installation is not workable.

e. Temporary Removal of Wire for Building Moving. The company shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

f. Tree Trimming. The company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the company, all trimming to be done under the supervision and direction of the city and at the expense of the company.

8. Prohibited - Discriminatory Practices. The company shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

9. Extension Policy. The company shall file with the city auditor its extension policy and amendments thereto, which shall be available to inspection by the public.

10. Transfer - Approval Required. The company shall not sell or transfer its plant or system to another, nor transfer any rights under this franchise to another without governing board approval. Provided, that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the city auditor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof.

11. City Rights in Franchise. The right is hereby reserved to the city to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of North Dakota.

The city shall have the right, during the life of this franchise, free of charge, where aerial construction exists, of maintaining upon the poles of the company within the city limits wire and pole fixtures necessary for a police and fire alarm system; such wires and fixtures to be constructed and maintained to the satisfaction of the company and in accordance with its specifications.

a. Compliance with company rules. The city in its use and maintenance of such wires and fixtures, shall at all time comply with the rules and regulations of the company so that there may be a minimum danger of contact or conflict between the wires and fixtures of the company and the wires and fixtures used by the city.

b. Liability. The city shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of said wires and fixtures authorized by this section and shall save the company harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of said wires and fixtures to the poles of the company. In case of rearrangement of the company plant or removal of poles or fixtures the city shall save the company harmless from any damage to persons or property arising out of the removal or construction of its wires or other fixtures.

The city shall have the right to supervise all construction or installation work performed subject to the provisions of this article and to make such inspections as it shall find necessary to insure compliance with governing ordinances.

Upon the revocation of this franchise by the governing body, or at the end of the term of this franchise the city shall have the right to determine whether the company shall continue to operate and maintain its distributing system pending the decision of the city as to the future maintenance and operation of such system.

12. Payment to the City. The company shall pay to the city for the privilege of operating its system under this franchise a negotiated sum that would be mutually agreeable to both parties. This section is not mandatory and the parties may agree upon whatever form of compensation, if any, that it considered fair and reasonable.

13. Rates. Rates charged by the company for service hereunder shall be fair and reasonable and filed with the governing body inspection.

14. Records and Reports. The city shall have access at all reasonable hours to all of the company's plans, engineering and service records. The following records and reports shall be filed with the city auditor and in the local office of the company.

a. Company Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by the company for the conduct of its business.

b. Gross Revenue. An annual summary report showing gross revenues received by the company from its operations within the city during the preceding year and such other information as the city shall request with respect to properties and expenses related to the company's service within the city.

15. Terms of Franchise. The franchise and rights herein granted shall take effect and be in force from and after the final passage hereof, as required by law, and upon filing of acceptance by the company with the city auditor, and shall continue in force and effect for a term of 20 years or such longer or shorter term as the parties may agree to.

11.0102

Any and all franchises granted and in operation prior to the date of the adoption of these ordinances shall remain in full force and effect and are not amended in any way by this ordinance.

Article 2
Qwest Corporation Franchise

11.0201 Grant of Franchise

An ordinance granting to Qwest Corporation, its successors and assigns, the right to use and occupy the streets, alleys, and other public places of Thompson, North Dakota, for the purpose of constructing, maintaining and operating a general telephone and telegraph system within said City.

Section 1. That Qwest Corporation, its successors and assigns, are hereby granted the right to use and occupy the streets, alleys and other public places of the City of Thompson, North Dakota, for a term of ten (10) years from February 7, 2004, for the purpose of constructing, maintaining and operating a general telephone and telegraph system within said city.

Section 2. That the rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be conferred upon said city.

Section 3. That this ordinance shall be in full force and effect, and shall constitute a binding contract between the City of Thompson and Qwest Corporation when it shall have been enacted according to law, and when the provisions hereof shall have been accepted in writing by said Qwest Corporation and such acceptance filed with the City Auditor.

Section 4. During the construction, maintenance or enlargement of any part of said telecommunications system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The City reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

Section 5. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in manner approved by the City Public Works Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or paved areas in as good a condition as before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.

March 11, 2004

Article 3
Midcontinent Cable Systems Franchise

11.0301 Short Title and Definitions

1. Short Title. This Ordinance shall be known and cited as the Cable Communications Regulatory Ordinance.

2. Definitions. For the purposes of this Ordinance, 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) "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 tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).

(b) "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:

Video Programming carried on the Basic Service Tier;

Video Programming offered on a pay-per-channel or pay-per-program basis; or

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:

consists of commonly-identified Video Programming; and

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) and 47 C.F.R. 76.90l(b) (1993).

(c) "Cable Service" means the one-way transmission to Subscribers of Video Programming, or other programming service, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.

February 17, 2009

(d) "Cable System" or "System" shall have the meaning ascribed to it in federal law.

(e) "Council" means the Thompson, North Dakota City Council.

(f) "Franchise" means an initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other MVPD facility.

(g) "Franchise Area" means the area within the legal boundaries of the Grantor.

(h) "Grantee" is the Person which is granted a Franchise in City pursuant to this Ordinance, its agents and employees, lawful successors, transferees or assignees.

(i) "Grantor" is the City of Thompson.

(j) "Gross Receipts" "Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers residing within the corporate limits of the City for basic cable service and premium pay services, such as HBO. Gross receipts shall not include revenues received as installation charges, and fees for reconnections, inspections, repairs or modifications of any installation, and all State and Federal Taxes relating thereto.

The payments that Grantee makes to the City shall be in lieu of any occupation tax, license tax, or similar levy by the City and shall be paid on a monthly basis based on the preceding years gross subscriber revenues. Upon completion of Grantee's audit, Grantee shall pay to the City within 15 days, the balance due, if any for the operating year covered by the Audit.

This amount payable by the Grantee to the City shall be the sole amount payable for all of its rights under this Ordinance including, but not limited to, the use of the streets and other facilities of the City in the operation of the Cable System and for the municipal supervision thereof and shall be in lieu of another occupational tax.

Notwithstanding the annual gross receipts fee or tax payable hereunder, if the Grantee is legally obligated to collect or pay any sales tax or other taxes, the Grantee shall have the right to charge the subscribers an additional amount equal to such tax.

(k) "Multichannel Video Program Distributor" or "MVPD" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

(l) "Open Video Services" or "OVS" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

(m) "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.

(n) "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.

(o) "Standard Installation" means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.

(p) "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 Grantor.

(q) "Subscriber" means any Person who lawfully receives Cable Service.

(r) "Video Programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

11.0302 Grant of Authority and General Provisions

1. Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable System or MVPD facility or to provide Cable Service, Video Programming or other MVPD services, including OVS, in the Grantor without a Franchise authorizing the same, unless applicable federal or State law prohibits the Grantor's enforcement of such a requirement.

2. Grant of Franchise. Any Franchise that is granted in City shall be subject to the terms and conditions contained herein.

3. Grant of Nonexclusive Authority.

(a) A Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in Franchise Area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in Franchise Area of a Cable System.

(b) A Franchise shall be nonexclusive, and Grantor reserves the right to grant a similar use of said Streets to any MVPD at any time, provided, however, that all Franchises shall contain the same terms and conditions as this Franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a Franchise or is granted a Franchise to operate by the Grantor, the terms and conditions of which do not comply with this Ordinance, other Grantees shall have the right either (i) to opt in to the competitor's Franchise by providing ten (10) days prior written notice to the Grantor; or (ii) to petition the Grantor for modifications to its Franchise, in which case the Grantor shall work in good faith with the affected Grantee(s) to review and adopt modifications which the Grantee(s) deem necessary, review and approval by Grantor shall not be unreasonably denied.

(c) Before granting an additional franchise, the Grantor shall give written notice to all Grantees of any new application, identifying the applicant for such additional Franchise and providing at least thirty (30) days prior notice of the date, time, and place at which the Grantor shall consider and/or determine whether such additional Franchise should be granted.

(d) Every Franchise shall apply to the entire service area of the Grantor, as it exists now or may later be configured.

(e) In the event Grantor grants one or more additional Franchises or one or more non-franchised MVPD's commence providing Cable Service in the Grantor, a Grantee shall have the right to terminate or reduce the term of this Franchise in its sole discretion.

(f) Neither City nor Grantee(s) may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any other ordinance and this Franchise, the Franchise shall control.

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

5. Territorial Area Involved. A Franchise shall be granted for the corporate boundaries of Grantor, as it exists from time to time. In the event of annexation by Grantor, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee(s) shall not be required to extend service beyond its present System boundaries unless there is a minimum of twenty-five (25) homes per cable mile as measured from the last fiber node or terminating amplifier.

6. Written Notice. All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to any officer of Grantee or Grantor's Administrator of this Ordinance as specified in a Franchise.

11.0303 Application For New Franchise

1. An application for an initial Franchise to provide Video Programming shall be in writing on a form provided by the City which shall contain where applicable:

(a) Applicant name and business address of Applicant.

(b) A statement as to the proposed Franchise Area, and whether Applicant holds an existing authorization to access the Rights-of-Way in the City and a map of the areas where such authorization exists if for an area other than the entire City.

(c) Resume of prior history of Applicant, including the legal, technical, and financial expertise of Applicant in the Cable Service field.

(d) List of officers, directors, and managing employees of Applicant and resumes of each.

(e) A proposed construction and schedule to provide Cable Service or Video Programming to Subscribers.

(f) A certificate of insurance consistent with the requirements of this Ordinance.

(g) A description of the Cable System the Applicant intends to build, including its capacity, the types of equipment proposed for use and the Cable Services or Video Programming which will be offered.

(h) A description of the financial qualifications of the Applicant to construct and operate the System including a balance sheet, income statement sources and uses of funds statement and pro forma projections for at least three (3) years of operation subsequent to System completion.

(i) A proposed plan for Public, Educational, and Government Access Channels, including funding, facilities, and equipment and capacity on the System to be dedicated for educational and governmental use if applicable.

2. The Initial Franchise Application may be evaluated according to the following criteria, and approved within one-hundred eighty (180) days after City deems the Application is complete. In the event Applicant is already authorized to occupy the Rights-of-Way, the time for review and approval will be ninety (90) days.

(a) The evidence of legal, technical and financial ability required in the Applicant's proposal will be such as to assure the ability to complete the entire System within a reasonable time from the date the Franchise is granted. The City will also consider the Applicant's ability to operate the System and provide the necessary Cable Services or Video Programming in compliance with the terms of this Ordinance.

(b) The City Administrator or designee shall prepare a report and make his or her recommendations respecting such application to the City Council.

(c) A public hearing shall be set prior to any grant of a Franchise, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions.

(d) The City may consider any additional information that it deems applicable.

11.0304 <u>Construction and Operations Standards</u>

1. <u>Conditions on Street Use</u>.

(a) A Grantee shall obtain all required permits from Grantor before commencing any construction upgrade or extension of the System.

(b) The Grantor shall impose no permit fees upon a Grantee.

(c) If at any time during the period of this Franchise Grantor shall elect to alter, or change the grade or location of any Street, alley or other public way, a Grantee shall, at its own expense, upon reasonable notice by Grantor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If Grantor reimburses other occupants of the Street, a Grantee shall be likewise reimbursed.

(d) A Grantee shall, on request of any Person holding a moving permit issued by Grantor, 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 a Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

(e) A Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

(f) Nothing contained in this Ordinance shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

(g) In areas where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

(h) A Grantee shall at all times construct and operate its System in accordance with applicable FCC Technical specifications.

(i) In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall, subject to the rights of the City to acquire the system as specified in Section 3.l.(j) herein, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.

(j) Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

(k) All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

(l) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.

(m) Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

(n) Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the City Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

(o) Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.

(p) During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

11.0305 <u>System Provisions and Public Services</u>

1. <u>Operation and Maintenance of System</u>. A Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

2. <u>Service to Schools and City</u>. The Grantee shall provide basic cable service at no cost to public and parochial elementary and secondary schools within the City, at one terminal junction, for educational purposes upon request of the school system. Grantee shall also provide to the City without charge, at one City owned building other than a hospital, nursing home, apartment or building at the airport, to be selected by the Council of Thompson, one junction terminal to said building and shall also furnish to the building, without charge, basic cable service to all sets connected within such building to the terminal junction.

3. <u>PEG Channel</u>. The Grantee shall allocate one channel to the City as a public, educational or governmental access channel. Until such time as the City files a written request with Grantee for full-time use of the channel, Grantee shall have the right to use that portion of the channel capacity that is not being used by the City. Grantee shall have a reasonable period of time after notification to vacate its use of the channel.

4. Emergency Use. In the case of any emergency or disaster, a Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use. A Grantee shall comply with the mergandy alert requirements of federal law.

5. Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

11.0306 Operation and Administration Provisions

1. Indemnification of Grantor.

(a) A Grantee shall indemnify, defend, and hold harmless Grantor, 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 a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring 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.

(b) In order for Grantor to assert its rights to be indemnified, defended, and held harmless, Grantor must with respect to each claim:

(1) Promptly notify a Grantee in writing of any claim or legal proceeding which gives rise to such right;

(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.

2. Insurance. A Grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of Grantor in its capacity as such. The policies of insurance 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 one 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.

3. Franchise Fee.

(a) A Grantee will pay Grantor an annual franchise fee in the amount of three (3%) percent of Grantee's annual Gross Revenues.

(b) The franchise fee shall be payable annually. The payment shall be made within thirty (30) days of the end of Grantee's fiscal year, together with a brief report showing the basis for the computation. Grantee may make franchise fee payments for lesser regular periods of time provided there exists a brief report showing the basis of the computation.

© The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by Grantee is due.

11.0307 Revocation, Abandonment, and Sale or Transfer

1. Grantor's Right to Revoke. Grantor reserves the right to revoke, terminate or cancel a Franchise, if after strictly following the procedures required by Section 7.2 herein, it is determined that a Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation.

2.) Procedures for Revocation.

(a) Grantor shall provide a Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, Grantor shall provide Grantee with written findings of fact which are the basis of the revocation.

(b) Grantee shall be provided the right to a public hearing affording due process before the Grantor Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. Grantor 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 Grantor to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.

(d) 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.

3. Sale or Transfer of Franchise. No sale or transfer of a Franchise shall take place without the written approval of the Grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assign of a Grantee. Said approval shall not be required where a Grantee grants a security interest in its Franchise and assets to secure indebtedness.

11.0308 Miscellaneous Provisions

1. Franchise Renewal. Any renewal of a Franchise shall be done in accordance with applicable federal law.

2. Amendment of Franchise. A Grantee and Grantor may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time.

3. Marketing. A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

4. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and the remainder shall remain in full force and effect.

11.0309 Publication, Effective Date

1. Publication; Effective Date. If applicable, this Ordinance shall be published in accordance with law. The effective date of this Ordinance shall be February 17, 2009.

2. Acceptance.

(a) Grantee shall accept this Franchise by executing same. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not been previously delivered.

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

February 17, 2009

Article 4
Electric Franchise

11.0401 Definitions

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

City. The City of Thompson, County of Grand Forks, State of North Dakota.

City Utility System. Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

Commission. The North Dakota Public Service Commission, or any successor agency or agencies, including an agency of the federal government which preempts all or part of the authority to regulate electric retail rates now vested in the North Dakota Public Service Commission.

Company. Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy its successors and assigns.

January 1, 2010

Electric Facilities. Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.

Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, 306 Pacific Avenue, P.O. Box 266, Thompson, ND 58278. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

Public Ground. Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

Public Way. Any street, alley, walkway or other public right-of-way within the City.

11.0402 Adoption of Franchise

2.1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

2.2 Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

2.3 Service and Rates. The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission of this State or its successor agency.

2.4 Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

2.5 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with

the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

11.0403 Location, Other Regulations

3.1 Location of Facilities. Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

3.2 Street Openings. Company shall not open or disturb any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Way or Public Ground without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.3 Restoration. After undertaking any work requiring the opening of any Public Way or Public Ground, Company shall restore the same, including paving and its foundation, to as good as condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

3.4 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

3.5 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Ways or Public Ground where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways and Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

3.6 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

11.0404 Relocations

4.1 Relocation of Electric Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Electric Facilities located therein if relocation is reasonably necessary to accomplish the Cry's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Electric Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

4.2 Relocation of Electric Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial improvement to the existing or proposed public use of the Public Ground.

4.3 Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Electric Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of North Dakota Century Code, Chapter 24-01-41, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless

the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.

4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.

11.0405 Tree Trimming

Company may trim all trees and shrubs in the Public Ways and Public Grounds of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

11.0406 Indemnification

6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be reasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

11.0407 Vacation of Public Ways

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under North Dakota Century Code, Chapter 40-39.

11.0408 Change In Form of Government

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

11.0409 Provisions of Ordinance

9.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

9.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

11.0410 Amendment Procedure

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

11.0411 Previous Franchises Superseded

This franchise supersedes any previous electric franchise granted to Company or its predecessor.