

ORDINANCE NO. 76

AN ORDINANCE GRANTING A FRANCHISE TO ALBANY MUTUAL TELEPHONE ASSOCIATION, A MINNESOTA CORPORATION (THE "FRANCHISEE"), ITS SUCCESSOR AND ASSIGNS, TO DIRECT, OWN, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM (THE "SYSTEM") IN THE CITY OF NEW MUNICH, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF A FRANCHISE.

The City Council of the City of New Munich, Minnesota ordains:

**WHEREAS**, the Franchisee has petitioned for the non-exclusive right to construct, own and operate a cable system in the City of New Munich, Minnesota; and

**WHEREAS**, the public has been provided with adequate notice and an opportunity to comment regarding such Franchise.

**NOW THEREFORE**, the City of New Munich, Minnesota hereby grants to Albany Mutual Telephone Association this cable television franchise ordinance.

1. **DEFINITIONS** As used in this Ordinance, the following terms shall have the meaning assigned to them in this Section 1:

(a) "Franchisor" is the City New Munich, Minnesota.

(b) "Franchisee" is Albany Mutual Telephone Association, a Minnesota corporation and its lawful assigns and successors-in-interest.

(c) "FCC" is the Federal Communications Commission of the United States.

(d) "Class IV Channel" means a signaling path provided by Franchisee to transmit signals of any type from a subscriber terminal to another point in the cable communications System.

(e) "Non-voice return communications" means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.

(f) The words "shall" and "must" are mandatory.

(g) The word "may" is permissive.

(h) The words "may not" are unconditionally prohibitive.

2. **GRANT OF AUTHORITY**

The City Council of New Munich, Minnesota hereby authorizes that a cable communications franchise for the installation, operation and maintenance of a cable communications system within the limits of the City of New Munich is granted to Albany Mutual Telephone Association, subject to the following terms and performance conditions:

3. **COMPLIANCE WITH FRANCHISE STANDARDS**

The franchise shall at all times be in compliance with the franchise standards of Minnesota Statutes Section 238.084.3.

4. **COMPLIANCE WITH STATE AND FEDERAL LAWS**

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

5. **FRANCHISE TERMS**

The Franchise shall have a term of 10 years effective from the 10/3 2005, and any renewal term if granted by the Franchisor shall be for the term of 10 years.

6. **RENEGOTIATION OF FRANCHISE TERMS**

Not less than one (1) year before the end of the franchise term, Franchisor and Franchisee shall meet to discuss the terms and conditions of a renewal term.

7. **FRANCHISE EXCLUSIVITY**

This Franchise is non-exclusive.

8. **SALE OR TRANSFER OF THE FRANCHISE, SALE OR TRANSFER OF STOCK**

Sale or transfer of this Franchise or sale or transfer of stock as to create a new controlling interest is prohibited, except at the approval of the Franchisor, which approval shall not be unreasonably withheld, and except that such sale or transfer is completed pursuant to Minnesota Statutes Section 238.083.

**9. RATES, RATE CHANGE PROCEDURE AND RESIDENTIAL SUBSCRIBER CONTRACTS**

(a) Franchisee shall make available for public inspection at its offices in the City of Albany, MN a current description of subscriber charges and the length and terms of residential subscriber contracts (if any).

(b) Subscriber charges are established according to the following procedures: (i) each subscriber is provided with written notice of rates at the time service to the subscriber commences; and (ii) notice of any changes to the rates shall be made in writing at least 30 days in advance of the effective date of the rate change.

**10. FRANCHISE ADMINISTRATOR**

City shall be responsible for the continuing administration of this Franchise

**11. PERFORMANCE BOND**

At the time the Franchise becomes effective and at all times thereafter until the Franchisee has liquidated its entire obligation with Franchisor, the Franchisee shall furnish, if requested by the Franchisor, a performance bond approved by the Franchisor in a reasonable amount. The amount of such bond will be deemed by the Franchisor to be adequate compensation for damages resulting from the Franchisee's nonperformance. The Franchisor may, from year to year, in its sole discretion, reduce the amount of the performance bond.

**12. LIABILITY FOR INJURY TO FRANCHISEE'S FACILITIES**

Nothing in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the Franchisee's facilities while performing any work connected with grading, regarding or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

**13. CHANNEL CAPACITY**

The actual channel capacity shall be a minimum of 30 channels.

**14. AUTHORIZATION TO COMMENCE CONSTRUCTION**

The Franchisee shall obtain a permit from the proper municipal authority before commencing construction of the 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, Franchisor shall provide Franchisee with written notice thereof and afford Franchisee thirty (30) days from the date of such notice to meet such conditions.

#### 15. COMPLIANCE WITH APPLICABLE CODES

All wires, conduits, cable and other property and facilities of the Franchisee 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 and customary trade, traffic or travel upon the streets and public places of the franchise area or endanger the life or property of any person.

#### 16. TECHNICAL STANDARDS

The rules of the FCC relating to cable communications systems contained in subpart K of part 76 of the FCC's rules and regulations relating to cable communications systems are incorporated herein by reference. The results of any test required by the FCC shall be filed within 10 days of the conduct of such tests with the Franchisor.

#### 17. SPECIAL TESTING

Franchisee shall be responsible for the costs of conducting any special testing to determine the source of technical difficulties.

#### 18. NON-VOICE RETURN CAPABILITY

(a) The franchisee shall construct and maintain a cable communications system having the technical capacity for non-voice return communications.

(b) If the Franchise is being renewed, sold or transferred and does not have the technical capacity for non-voice return communications, Franchisor shall determine when and if the technical, capacity for non-voice return communications is needed after appropriate public proceedings at the municipal level giving reasonable notice and a reasonable opportunity to be heard.

#### 19. SUBSCRIBER PRIVACY

(a) No signals of Class IV Channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. 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 year, which shall be renewable 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 time 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.

(b) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or any lists that identify the viewing habits of subscribers may be sold or otherwise made available to any party other than to the Franchisee and its employees for internal business use, or to the subscriber who is the subject of that information, unless the Franchisee has received specific written authorization from the subscriber to make the data available.

(c) Written permission from the subscriber shall not be required for conducting 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 Section 21 (b) hereof

## **20. SUBSCRIBER COMPLAINTS**

Franchisee shall establish reasonable procedures to resolve any 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 systems. .

## **21. REPAIRS AND COMPLAINTS**

The Franchisee shall provide to the subscriber at least a toll-free or collect telephone number for the reception of subscriber complaints and the Franchisee shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request for service.

## **22. TERMINATION**

The Franchisor shall have the right to terminate and cancel the Franchise and all rights and privileges of the Franchise if 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 Franchisor.

Franchisor 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 sixty (60) days after service 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 Franchisor to the termination of the Franchise. In the event the Franchisor determines to terminate the Franchise, Franchisee will have sixty (60) days from the date of the conclusion of the public hearing at which the termination is considered within which to file an appeal in a court or forum of competent jurisdiction. During the sixty (60) day period, the Franchise shall remain in full force and effect. If the court or forum approves of the action of the Franchisor, the Franchise remains in full force and effect during the term unless earlier terminated in accordance with this Franchise or applicable law.

## **23. ABANDONMENT**

The Franchisee may not abandon any portion of the cable communications service provided hereunder without having given sixty (60) days prior written notice to the Franchisor. Franchisee may not abandon any cable communications service or any portion thereof without compensating the Franchisor for damages resulting to it from such abandonment.

#### **24. REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE**

Upon termination or forfeiture of the Franchise, the Franchisee shall remove its cable, wires, and appliances from the streets, alleys and other public places within the Franchise area if the Franchisor so requests. If Franchisee fails to remove such equipment within sixty (60) days of the effective date of such termination or forfeiture, Franchisor may purchase the System for fair market value, which is deemed to be equitable consideration.

#### **25. ACCESS CHANNELS**

(a) The Franchisee shall provide to each of its subscribers who receive 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 served, 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 noncommercial users who have leased time. The Basic Tier must be used for specially designated access.

(b) The Franchisee shall establish rules for the administration of the specially designated access channel, including but not limited to the prohibition of programming that Franchisee reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive way as measured by contemporary community standards.

#### **27. INDEMNIFICATION.**

Franchisee agrees to indemnify and hold Franchisor, its agents and employees, harmless from any claims for damages resulting from any negligent actions of the Franchisee in constructing, operating, and maintaining the cable communication system. Franchisor agrees to promptly give Franchisee written notice of its obligation to indemnify Franchisor within five (5) days of receipt of a claim or action by the Franchisor. Notwithstanding the foregoing, Franchisee shall not be obligated to indemnify Franchisor for any damages, liabilities, or claims resulting from the misconduct or negligence of Franchisor for the Franchisor's use of the cable communication system or the Franchisor's public access forum and channel.

#### **28. MUNICIPAL RIGHT TO PURCHASE**

If the Franchise or System is offered for sale, the Franchisor shall have the right to purchase the System.

Passed the City of New Munich Council this 3<sup>rd</sup> day of October, 2005.

Harold D. Klybuck Mayor  
(signature of Mayor)

Lilly Y. Li  
(signature of Clerk)

Albany Mutual Telephone Association  
By: [Signature]  
Its COO

10/3/05  
(Date)

Effective dates if applicable should be so stated.