

## ORDINANCE NO. 232

### AN ORDINANCE OF THE CITY OF ADEL, IOWA, GRANTING A FRANCHISE TO MCC IOWA LLC, MEDIACOM COMMUNICATIONS CORPORATION, FOR THE CONSTRUCTION AND OPERATION OF A CABLE SYSTEM.

BE IT ENACTED BY THE CITY COUNCIL, THE CITY OF ADEL, IOWA that the following agreement shall replace Ordinance No. 168 in its entirety upon the effective date as established herein;

The City of Adel, Iowa, having determined that the financial, legal, and technical ability of MCC Iowa LLC, is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable – related needs of the community, does hereby ordain as follows:

#### FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is between the City of Adel, hereinafter referred to as "the Franchising Authority" and MCC Iowa LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware, hereinafter referred to as "the Grantee."

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

#### SECTION 1 Definition of Terms

1.1 **Terms.** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Basic Cable Service" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- B. "Cable Act" means Title VI of the Cable Act of 1934, as amended.

- C. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- D. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.
- E. "FCC" means Federal Communications Commission or successor governmental entity thereto.
- F. "Franchising Authority" means the City of Adel.
- G. "Grantee" means MCC Iowa LLC, or the lawful successor, transferee, or assignee thereof.
- H. "Gross Revenues" means revenues derived from the operation of the Cable System received by Grantee from Subscribers for Basic Cable Services in the Service Area; provided, however, that Gross Revenues shall not include franchise fees, the FCC User Fee or any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency.
- I. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- J. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.
- K. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.
- L. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.
- M. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

**SECTION 2**  
**Grant of Franchise**

- 2.1 **Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes.
- 2.2 **Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control.
- 2.3 **Other Authorizations.** The Franchising Authority shall not permit any person to provide services similar to those provided by the Grantee in the Service Area without first having secured a non-exclusive franchise from the Franchising Authority. The Franchising Authority agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Franchising Authority to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of this Franchise, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal, are not more burdensome and/or less favorable than those contained in any such additional franchise(s) or authorizations.

**SECTION 3**  
**Standards of Service**

- 3.1 **Conditions of Occupancy.** The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

- 3.2 **Restoration of Public Ways.** If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.
- 3.3 **Relocation for the Franchising Authority.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.
- 3.4 **Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.
- 3.5 **Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System.
- 3.6 **Safety Requirements.** Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code.
- 3.7 **Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Grantee shall participate in and use Iowa One Call and ensure that cable is buried at a depth of a minimum of twelve inches (12"). Temporary drops will be buried within one month of installation, weather permitting. Nothing contained in this subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

- 3.8 Access to Open Trenches.** The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.
- 3.9 Required Extensions of the Cable System.** Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.
- 3.10 Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.
- 3.11 Cable Service to Public Buildings.** The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable Service to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in



areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's Cable System or any loss or damage to Grantee's Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable Service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

- 3.12 **Emergency Alert.** Any Emergency Alert System ("EAS") provided by Grantee shall be operated in accordance with FCC regulations. Any use of such EAS by the Franchising Authority will be only in accordance with the applicable state and local plans as approved in accordance with such FCC regulations. Except to the extent expressly prohibited by law, the Franchising Authority will hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including but not limited to reasonable attorneys' fees and costs.
- 3.13 **Reimbursement of Costs.** If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.
- 3.14 **Drop Maintenance.** Grantee shall maintain and replace subscriber drops during its normal operation of the cable system that do not meet the standards of the National Electric Safety Code. The cable system shall be designed to allow each Subscriber drop to provide service to three (3) outlets.
- 3.15 **Liquidated Damages.** The Franchising Authority may assess against the Grantee a penalty of one-hundred dollars (\$100) per day for failure to meet the construction requirements of this Franchise Agreement provided that the due process provisions of Section 8 of this Agreement are followed in their entirety.
- 3.16 **Conversion.** Subscribers shall not be charged by Grantee for conversion from the existing system to any upgraded or rebuilt system. In the event that special additional or customized equipment is requested by any subscriber or is required to provide such service to any subscriber, Grantee may charge the subscriber for such equipment.
- 3.17 **Parental Control Devices.** Grantee shall provide to subscribers, upon request, parental control devices that allow any channel or channels to be locked out. Such devices shall block both the video and the audio portion of such channels to the extent that both are unintelligible. The cost to subscribers for parental control devices is subject to FCC regulations.

- 3.18 **Technical Standards.** The cable communications system permitted to be operated hereunder shall be installed and operated in conformance with the Ordinance, the Franchise, and FCC rules and regulations. Any FCC technical standards or guidelines related to the cable communications system and facilities shall be deemed to be regulations under this Franchise. At such time as the FCC does not regulate technical standards, Grantee will continue to comply with the FCC standards which were in effect on the effective date of this Franchise.
- 3.19 **Public, Educational and Government Access.** During the term of this Franchise Agreement, the parties may enter into a supplemental Agreement whereby the Grantee will provide the Franchising Authority with one (1) Access Channel on the Cable System designated for Public, Educational or Government Access purposes, under terms and conditions (including the provision by Grantee of the equipment necessary to originate cablecast programming) mutually agreeable by the parties. Any Access Channel made available to the Franchising Authority shall be for the purpose of cablecasting non-commercial programming by City residents, City administration, and educational institutions. The Franchising Authority will not use the Access Channel to provide commercial or revenue-generating services that may compete with services provided by the Grantee, provided, however, that the Franchising Authority may cablecast acknowledgements of funding sources and the underwriting of programming costs.

#### **SECTION 4** **Subscriber Information and Policy**

- 4.1 **Subscriber Information.** Grantee shall provide Subscriber information as required by applicable law and FCC regulation throughout the term of the Franchise.
- 4.2 **Subscriber Complaints.** Pursuant to the Ordinance, Grantee shall promptly respond to and resolve all subscriber complaints. However, nothing herein shall require Grantee to maintain or repair any equipment not provided by it.
- 4.3 **Major Outages.** Grantee shall maintain records of all major outages defined as a discontinuation of cable service from one or more fiber nodes in the City of Adel. Such records shall indicate the estimated number of subscribers affected, the date and time of first notification or of Grantee knowledge of the outage, the date and time service was restored, the cause of the outage and a description of the corrective action taken. Such records shall be available to the Franchising Authority during normal business hours upon reasonable prior notice and retained in Grantee's files for not less than five (5) years. Upon written request of the Franchising Authority, a statistical summary of such records shall be prepared by Grantee and submitted to the Franchising Authority annually.
- 4.4 **Customer Handbook.** Grantee shall provide written customer policies or a handbook to all new subscribers and, thereafter, upon request. Grantee's written customer policies or handbook shall, at a minimum, comply with all notice

requirements in the Ordinance and those promulgated by the FCC. If Grantee's operating rules are changed subscribers shall be notified in a timely manner. Rate and consumer complaint information will be distributed annually to subscribers. Grantee shall file a consumer handbook with the Franchising Authority annually upon request.

- 4.5 **Downgrades.** Subscribers shall have the right to have cable service downgraded in accordance with FCC rules. No charge shall be made for disconnection of basic service. The billing for such service will be effective immediately and such disconnection or downgrade shall be made as soon as practicable. Nothing contained in this section shall not prohibit Grantee from requiring that Subscribers provide advance notice of intent to disconnect services. A refund of unused service charges shall be paid to the customer within forty-five (45) days from the date of termination of service.
- 4.6 **Outages.** For service interruptions of over four (4) hours and up to fourteen (14) days, the Grantee shall provide, at the subscriber's verbal or written request, a credit of one thirtieth (1/30) of one month's fees for affected services for each 24-hour period service is interrupted for four (4) or more hours. For service interruptions of over fourteen (14) days, the Grantee shall provide, at the subscriber's verbal or written request for a rebate, a credit of one month's fees for affected services. This provision shall not apply if the service interruption is the result of a cable system upgrade or rebuild.
- 4.7 **Subscriber Contracts.** All contracts between Grantee and their subscribers shall be in compliance with this Franchise. Grantee shall file a copy of the Grantee's subscriber contract with the Franchising Authority annually upon request.
- 4.8 **Repair Calls.** Grantee shall offer subscribers repair service appointments in four-hour or less windows.
- 4.8 **Installation.** Subscriber service shall be installed within seven days of a request during normal operating conditions.
- 4.9 **Administrative Fee and Disconnects.** Administrative fees may be charged on any accounts which have not been paid prior to the next billing cycle. Disconnection of accounts due to non-payment occurs no sooner than after 45 days of due date.
- 4.10 **Subscriber Bill.** Grantee shall include its name, address, and telephone number on the subscriber bill and the portion of the bill retained by the subscriber. Grantee shall have the Franchising Authority's address and telephone number included on the subscriber's bills.



**SECTION 5**  
**Regulation by the Franchising Authority**

**5.1 Franchise Fee.**

A. The Grantee shall pay to the Franchising Authority a franchise fee of two percent (2%) of annual Gross Revenues (as defined in subsection 1.1 of this Franchise). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due semi-annually and payable within 60 days following December 31 and June 30 of each year. Any fee not paid when due shall bear interest at a rate of one and one-half percent per month from date due. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. **Limitation on Franchise Fee Actions.** The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the Franchising Authority.

C. **Franchise Fee Audit.** Grantee will fully cooperate with a franchise fee audit performed by a professional firm that is chosen by the Franchising Authority. The costs associated with the audit will be paid for by the Franchising Authority, except that the Grantee shall pay for costs if the audit shows an underpayment of franchise fees in excess of five percent (5%) or more for a reporting period.

D. **Franchise Fee Increases.** The Franchising Authority may request an increase in franchise fees at any time during the term of the franchise, equal to the maximum percentage allowed by federal law. However, such request shall be made in writing and the Grantee will not be liable for said increase until proper notice, as defined by federal law, is given to its subscriber. Prior to making a final decision regarding an increase in franchise fees, the Franchising Authority shall conduct a public hearing and shall grant an opportunity to the Grantee to discuss the proposed increased franchise fee.

**5.2 Rates and Charges.** The Franchising Authority may regulate rates for the provision of Basic Cable Service and equipment as expressly permitted by federal law.

**5.3 Renewal of Franchise.**

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the renewal provisions of federal law.

B. In addition to the procedures set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has

adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express renewal provisions of the Cable Act.

5.4 **Conditions of Sale.** If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act. The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

5.5 **Transfer of Franchise.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior written notice to the Franchising Authority. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness.

## **SECTION 6**

### **Books and Records**

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records

for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

## **SECTION 7**

### **Insurance and Indemnification**

- 7.1 **Insurance Requirements.** The Grantee shall maintain insurance in full force and effect, at its own cost and expense, during the term of the Franchise. The Franchising Authority shall be designated as an additional insured and such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.
- 7.2 **Indemnification.** The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System in the Service Area provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

## **SECTION 8**

### **Enforcement and Termination of Franchise**

- 8.1 **Notice of Violation.** In the event that the Franchising Authority believes that the Grantee has not complied with the any material term of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of such alleged noncompliance.

- 8.2 The Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the notice described in subsection 8.1: (A) to respond to the Franchising Authority, contesting the assertion of such noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of such default, it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.
- 8.3 Public Hearing.** In the event that the Grantee fails to respond to the notice described in subsection 8.1 pursuant to the procedures set forth in subsection 8.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 8.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.
- 8.4 Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 8.3, determines that the Grantee is in material default of any provision of the Franchise, the Franchising Authority may:
- A. Commence an action at law for monetary damages or seek other equitable relief; or
  - B. In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise, seek to revoke the Franchise in accordance with subsection 8.5.
- 8.5 Revocation.** Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 8.1-8.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the franchise. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.



Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court which shall have the power to review the decision of the Franchising Authority *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

- 8.6 **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

## **SECTION 9**

### **Miscellaneous Provisions**

- 9.1 **Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
- 9.2 **Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.

- 9.3 **Reservation of Rights.** Acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Franchising Authority acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitutions and laws.

If at any time during the term of this franchise, federal, state or local law permits any provider of video programming to provide services such as those provided pursuant to this franchise either without obtaining a franchise from the Franchising Authority or on terms or conditions more favorable than those applicable to the Franchisee (Grantee), then this franchise shall at the sole discretion of the Franchisee (Grantee): (1) cease to be in effect; or (2) be deemed to expire at a date prior to the original expiration date selected by the Franchisee (Grantee); or (3) will be automatically reformed to grant to the Franchisee (Grantee) the more favorable terms, benefits and conditions available to the other provider.

- 9.4 **Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, c) within five (5) business days after having been posted in the regular mail or d) on the next business day if sent by express mail or overnight air courier.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Adel  
City Administrator  
301 South 10<sup>th</sup> Street  
Adel, IA. 50003-0248

The notices or responses to the Grantee shall be addressed as follows:

MCC Iowa LLC  
Attn: Government Relations  
2195 Ingersoll Avenue  
Des Moines, IA 50312-5289

With a copy to:

MCC Iowa LLC  
Mediacom Communications Corporation  
Attn: Legal Department  
100 Crystal Run Road  
Middletown, NY 10941

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.


9.5 **Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

9.6 **Severability.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

9.7 **Term and Effective Date.** The Effective Date of this Franchise is the date of final adoption by the Franchising Authority as set forth below subject to Grantee's acceptance by countersigning where indicated below. This Franchise shall be for a term of ten (10) years from such Effective Date and shall expire on December 2016. This agreement shall have the option of one renewable five (5) year term, subject to approval by both the Franchising Authority and the Grantee.

Considered and approved this 12 day of December, 2006.

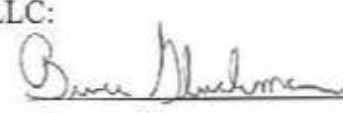
City of Adel:

Signature: 

Printed Name: James F. Peters

Title: Mayor

MCC Iowa LLC:

Signature: 

Printed Name: Bruce Gluckman

Title: Vice President Legal & Regulatory Affairs



Mediacom Communications Corporation  
2205 Ingersoll Avenue  
Des Moines, IA 50312

**William F. Peard**

Sr. Mgr. of Government Relations  
West Iowa Region  
North Central Division

Phone: (515) 246-2205  
Fax: (515) 246-2211  
Cell: (515) 681-0206  
[bpeard@mediacomcc.com](mailto:bpeard@mediacomcc.com)

February 12, 2007

Mr. Chad Bird  
City Administrator  
City Of Adel  
301 South 10<sup>th</sup> Street  
Adel, IA. 50003-0248

Dear Chad,

Please find enclosed your fully executed copy of your franchise with MCC Iowa LLC. I enjoyed working with you during this renewal process and look forward to working with you in the future as well. If you have any questions please feel free to contact me at 515-246-2205 or by e-mail [bpeard@mediacomcc.com](mailto:bpeard@mediacomcc.com).

Regard,

Bill Peard  
Senior Manager Government Relations  
Mediacom Communications