

ORDINANCE NO. ____128-A____

AN ORDINANCE CREATING AND AWARDING A CABLE COMMUNICATIONS FRANCHISE IN THE CITY OF STOCKTON.

- DEFINITIONS:
1. "FCC" is the Federal Communications Commission of the United States.
 2. "Franchisor" or "Franchising Authority" is the City of Stockton.
 3. "Franchisee" is Hiawatha Broadband Communications, Inc.
 4. "Class IV Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a customer terminal to another point in the cable communications system.
 5. The word "shall" is mandatory.
 6. The word "may" is permissive.

GRANT OF AUTHORITY

The City Council of Stockton, Minnesota, ordains that a cable communications franchise for the installations, operation and maintenance of a cable communications system within the City of Stockton is granted to Hiawatha Broadband Communications, Inc.; provided, however, that said franchise shall be subject to the following terms and performance conditions:

1. COMPLIANCE WITH STATE AND FEDERAL LAWS

Franchisor has adequately considered the technical ability, financial conditions, and legal qualification of the Franchisee and has allowed for a full public proceeding that afforded reasonable notice and an opportunity for the public to be heard. The Franchisee and the Franchising Authority shall conform to all state laws and rules regarding cable communications not later than one (1) year after they become effective unless otherwise stated and to all federal laws and regulations regarding cable as they become effective.

2. FRANCHISE TERMS

The term of the franchise shall be to December 31, 2025, with renewal option fifteen (15) years. To the extent that the Franchisor should collect a franchise fee, Franchisor shall have the authority to audit the Franchisee's accounting and financial records as mutually agreed upon to confirm such payment upon thirty (30) days' notice to franchisee. Franchisee shall also file annually with Franchisor reports related to customer revenues and such other information related to the calculation of franchise fees.

3. RENEGOTIATION OF FRANCHISE TERMS

Renegotiation between the franchisor and franchisee shall be in accordance with chapter 5, subchapter V-A of the Federal Communications Act,

as amended from time to time, 47 U.S.C. §§ 521 et seq., and the rules of the Federal Communications Commission, and Minnesota Statutes, chapter 237.

4. FRANCHISE EXCLUSIVITY

This franchise agreement is non-exclusive.

5. SALE OR TRANSFER OF THE FRANCHISE, SALE OR TRANSFER OF STOCK

Sale or transfer of this franchise or sale or transfer of stock so as to create a new controlling interest is prohibited except at the approval of the Franchising Authority, which approval shall not be unreasonably withheld.

6. RATES AND RATE CHANGE PROCEDURE

To the extent that federal or State law or regulation may now, or as the same may hereafter be amended to, authorized the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Franchisee, the city shall have the right to exercise rate regulation to the full extent authorized by law and Franchisee agrees that its rates shall be calculated in conformance with the provisions of Title IV of the Federal Communications Act, as amended from time to time, and the rules of the Federal Communications Commission promulgated hereunder, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. Franchisee shall provide Franchisor with information related to current customer charges (including a copy of the residential customer contract) and such information shall be made available for public inspection by the Franchisor.

7. GROSS REVENUE

Gross revenue means the annual gross revenues of a Franchisee, from all sources of operation of the System in the City of Stockton including but not limited to, basic customer service monthly fees, pay cable fees, installation and reconnection fees, convertor rentals and remotes. The term does not include any taxes on services furnished by a Franchisee and imposed directly upon any customer or used by the State, City or other governmental unit and collected by a Franchisee on behalf of said governmental unit, or bad debts.

8. FRANCHISE ADMINISTRATOR

The City Clerk shall be responsible for the continuing administration of this franchise.

9. LIABILITY INSURANCE

(1) The Franchisee shall maintain insurance throughout the term of the Franchise in amount at least as follows:

| | |
|------------------------------|---|
| Workers' Compensation | Statutory limits |
| Commercial General Liability | \$1,000,000 per occurrence Combined single liability (C.S.L.) |

| | |
|--|--------------------------------------|
| | \$2,000,000 general aggregate |
| Auto Liability including Coverage on all owned, non- Owned and hired autos | \$1,000,000 per occurrence C.S.L. |
| Umbrella Liability | \$1,000,000 per occurrence C.S.L. |

(2) The City of Stockton shall be added as an additional named insured to the above Commercial General Liability and Auto Liability coverage.

(3) The Franchisee shall furnish the City with current certificates of insurance evidencing such coverage.

PERFORMANCE BOND

At the time the franchise becomes effective and at all times thereafter until the franchisee has liquidated its entire obligation with the franchising authority, the franchisee shall furnish a certificate of deposit or any other type of instrument approved by the franchising authority in the amount of \$1,500.00.

This amount is deemed by the franchising authority to be adequate compensation for damages resulting from the franchisee's nonperformance. The franchising authority may, from year to year, in its sole discretion, reduce the amount of the certificate of deposit or instrument.

10. 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, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

11. TECHNICAL SPECIFICATIONS

The cable system will have the minimum capacity to offer up to forty-six (46) channels. The Franchisee shall maintain the system in conformance with FCC technical standards as promulgated by FCC in subpart K of Part 76 of the FCC rules relating to cable communications systems. The results of any FCC tests shall be provided by Franchisee to Franchisor. As provided for in Section 238.084(t) of Minnesota Statutes, the cable system shall be constructed in a manner necessary to have the technical capacity for no-voice communications on the system; provided, however, that nothing herein shall require or mandate Franchisee to provide such non-voice return communications on the system. The Franchisee shall maintain a minimum depth on all feeder and trunk cable in city right of way, as specified in the National Electric code and National Electric Safety Code.

CONSTRUCTION SCHEDULE

Within 90 days of the granting of the franchise, the franchisee shall apply for all necessary permits, licenses, certificates and authorizations; that energized trunk cable shall be extended substantially throughout the authorized area within one year after receipt of all necessary

governmental permits, licenses, certificates and authorizations; and that persons along the route of the energized cable will have individual "drops" as desired during the same period of time; the requirement of this provision may be waived by the franchising authority only upon occurrence of unforeseen events or acts of God.

12. ACCESS CHANNEL

The Franchisee shall provide to each of its customers who receive all, or any part of, the total services offered on the system, reception on at least one specially designated access channel, and for education and governmental purposes. Such channel shall be made available on a first com/first served non-discriminatory basis and may be leased by Franchisee for commercial and non-commercial purposes when not in use.

13. AUTHORIZATION TO COMMENCE CONSTRUCTION

The Franchisee shall obtain a permit from the proper municipal authority before commencing construction of any communications system, including the opening or disturbance of any street, sidewalk, driveway or public place. If the Franchisee fails to meet the conditions of the permit, it shall be subject to fines and remedies set forth in those codes.

14. 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 lives or property of any person.

15. RELOCATION OF WIRES, ETC.

The following procedure shall be used by the Franchisee and Franchising Authority for the relocation or removal of the Franchisee's wires, conduits, cables and other property located in said street, right-of-way or public place whenever the franchising authority undertakes public improvements which affect the cable equipment. Given reasonable notice, Franchisee, at its expense, shall move, relocate or otherwise accommodate necessary changes to cables, conduits or equipment so as not to hinder public improvements initiated by the City.

16. SPECIAL TESTING

In the event that special testing is required by the Franchisor to determine the source of technical difficulties, the cost of said testing shall be borne by the Franchisee if the testing reveals the Franchisee to be responsible. If the testing reveals the difficulties to be caused by factors that are beyond the Franchisee's control, the cost of testing shall be borne by the Franchisor. In the event that special testing is performed by the Franchisee and not at the request of the Franchisor, the Franchisee shall bear the cost of said testing regardless of the factors causing technical difficulties.

17. CUSTOMER PRIVACY

No signals of a Class IV cable communications channel may be transmitted from a customer terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the customer. The request for such permission shall be contained in a separate document with a prominent statement that the customer 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 renewed at the option of the customer. No penalty shall be invoked for a customer'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 of classification of Class IV cable communications activity planned for the purpose.

No information or data obtained by monitoring transmission of a signal from a customer terminal, including but not limited to lists or the names and addresses of such customers or any lists that identify the viewing habits of customers shall be sold or otherwise made available to any party other than to the company and its employees for internal business use, and also to the customer subject of that information, unless the company has received specific written authorization from the customer to make such data available.

Written permission from the customer shall not be required for the systems 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 the limitations in the above paragraph

18. CUSTOMER COMPLAINTS

All complaints by the Franchisor, customers, or other citizens regarding the quality of service, equipment malfunction, billing disputes and any other matters relative to the cable communications system shall be investigated and resolved by the Franchisee. If after a reasonable time, a complaint reported to the franchisee has not been investigated and resolved, the complainant may report said unresolved complaint to the city clerk. If the complaint remains unresolved after investigation by the city clerk, the city clerk may report said complaint to the Council. The Council may negotiate with the franchisee and may order resolution of complaint, if necessary.

19. REPAIRS AND COMPLAINTS

The Franchisee shall provide at least a telephone number for the reception of customer complaints and shall maintain a repair service capable of responding to customer complaints or requests for service within 24 hours after receipt of the complaint or request. Costs included in making repairs, adjustments and follow-up repairs to faulty installations shall be borne by the Franchisee.

20. TERMINATION

The Franchising Authority shall have the right to terminate and cancel the franchise and all rights and privileges of the Franchise in the event that the Franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the franchising authority. The municipality shall provide the Franchisee with a written notice of the

cause for termination and its intention to terminate the Franchise and shall allow the Franchisee a minimum of thirty days subsequent to receipt of the notice in which to correct the violation. The Franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the Franchise. The Franchising Authority shall hear any persons interested therein, and shall determine, in its discretion, whether or not any default, failure, refusal or neglect by the Franchisee was with just cause, the Council shall direct the Franchisee to comply within such time and manner and upon such terms and conditions as are reasonable. If the Franchising Authority shall determine such fault, failure, refusal or neglect by the Franchisee was without just cause, then the Council may, by resolution, declare that the Franchise of Franchisee shall be terminated.

21. ABANDONMENT

The Franchisee may not abandon any portion of the cable communications service provided hereunder without having given three (3) months prior written notice to the Franchising Authority. Franchisee may abandon any cable communications service or any portion thereof without compensating the Franchising Authority for damages resulting to it from such abandonment.

22. REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE

Upon termination or forfeiture of a franchise, the Franchisee shall remove its cable, wires, and appliances from the streets, alleys and other public places within the franchise area if the Franchising Authority so requests. In the event the Franchisee fails to remove its cables, wires and appliances within reasonable time after notification to do so, the Franchisor may contract for said removal and charge the Franchisee for resulting costs or may elect to assume ownership of said items.

23. MUNICIPAL RIGHT TO PURCHASE SYSTEM

In the event the Franchisee should sell the franchise granted hereunder or should sell the cable system operated by the Franchisee in this area and surrounding communities, then Franchisor shall have a right of first refusal to purchase the franchise or system on the same terms and conditions including price, as offered to the prospective purchaser. Franchisor shall respond to such right of first refusal within seven (7) days after such notice is provided by Franchisee.

24. LINE EXTENSION

The Franchisee shall extend cable service to new subdivisions when either of the two following criteria are met:

a. When, within the city limits exists a density of 14 homes per plant mile or portion thereof measured from the nearest existing plant from which service can be reasonable provided, or

b. When the subdivision is within three hundred (300) feet of existing cable plant and the Franchisee has a reasonable opportunity to install cable facilities at the time other utilities such as electricity and telephone are installed. In this context, the Franchisee shall be deemed to have reasonable opportunity when given sufficient notice to acquire the necessary materials

for the installation and when the Franchisee is not unfairly discriminated against by the developer and/or other utility companies involved, with respect to cost sharing on the project.

For residents requesting service which does not meet the criteria set forth in paragraphs a. or b. above, the Franchisee shall reasonable cooperate with such residents in reaching a cost-sharing agreement providing that the e Franchisee pay the cost of the first 300 feet and 60% of the cost of the extension beyond 300 feet, up to a maximum of 600-feet, and the customer pay 40% of the cost.

25. FRANSCHISE FEE

a. A Franchisee will pay a franchise fee to the City in an amount up to five (5%) percent of the Franchisee's Gross Revenue. The Franchisee shall be allowed to add a five (5%) percent franchise fee to each customer monthly bill as a separate item on the bill. The City may set the percentage amount as allowed by State or Federal law and may change the percentage at any time provide that at least two months written notice is given to the Franchisee. Any increase in the franchise fee may be added to a paid customer's bill as a separate item on the bill.

b. The franchise fee shall be paid to the City 30 days following the end of each quarter of the calendar year.

26. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Effective upon publication,
Passed the Council of the City of Stockton this ____ day of _____, 2014

(Signature of Mayor)

(Signature of Clerk)

Accepted by Hiawatha Broadband Communications, Inc.

(Acceptance by Company)

(Date)