

CHAPTER 6 LICENSED ACTIVITIES

ORDINANCE 651	CABLE TELEVISION FRANCHISE	
Section 651.01: SHORT TITLE AND DEFINITIONS.....		651-1
Subd. 1. Short Title		651-1
Subd. 2. Definitions.....		651-1
Section 651.02: GRANT OF AUTHORITY AND GENERAL PROVISIONS		651-3
Subd. 1. Grant of Franchise.....		651-4
Subd. 2. FRANCHISE REQUIRED		651-4
Subd. 3. COMPLIANCE WITH STATE AND FEDERAL LAWS		651-4
Subd. 4. FRANCHISE TERM		651-4
Subd. 5. FRANCHISE EXCLUSIVITY		651-4
Subd. 6. SALE OR TRANSFER OF THE FRANCHISE; SALE OR TRANSFER OF STOCK.....		651-4
Subd. 7. ACCESS TO FINANCIAL RECORDS		651-4
Subd. 8. RATES, RATE CHANGE PROCEDURE AND RESIDENTIAL SUBSCRIBER CONTRACTS		651-4
Subd. 9. FRANCHISE ADMINISTRATOR		651-5
Subd. 10. LIABILITY INSURANCE		651-5
Subd. 11. INDEMNIFICATION.....		651-5
Subd. 12. PERFORMANCE BOND.....		651-6
Subd. 13. CONSTRUCTION STANDARDS		651-6
Subd. 14. TECHNICAL STANDARDS AND SPECIAL TESTING.....		651-8
Subd. 15. SUBSCRIBER PRIVACY.....		651-9
Subd. 16. SUBSCRIBER COMPLAINTS.....		651-9
Subd. 17. UNLAWFUL DENIAL		651-9
Subd. 18. TERMINATION.....		651-10
Subd. 19. ABANDONMENT		651-10
Subd. 20. REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE.....		651-10
Subd. 21. MUNICIPAL RIGHT TO PURCHASE SYSTEM		651-11
Subd. 22. ACCESS CHANNELS		651-11
Subd. 23. FRANCHISE FEE		651-11
Subd. 24. NON-INTERFERENCE		651-11
Subd. 25. LINE EXTENSION		651-11
Subd. 26. OBSCENITY		651-12
Subd. 27. CONTRADICTIONS WITH STATE OR FEDERAL LAW		651-12
Subd. 28. CABLE SERVICES TO PUBLIC BUILDINGS.....		651-12
Subd. 29. ADDITIONAL FRANCHISE REQUIREMENTS.....		651-12
Subd. 30. ANNEXED AREAS		651-12

CHAPTER 6 LICENSED ACTIVITIES

Subd. 31. ENFORCEMENT651-12
Subd. 32. EFFECTIVE DATE.....651-12

CHAPTER 6 LICENSED ACTIVITIES

ORDINANCE 651 CABLE TELEVISION FRANCHISE

RECITALS:

WHEREAS, the City of Kimball, State of Minnesota (the “Franchisor”), duly and lawfully enacted Ordinance 651 (the “Franchise”), granting a non-exclusive franchise to operate and maintain a cable communications system (“Cable System”) within its boundaries; and

WHEREAS, Melrose Telephone Company, dba Arvig, (as previously approved by resolution changing control from Melrose Telephone Company “MTC”) is the current franchisee (“Franchisee”);

WHEREAS, the Franchise was validly existing, legally enforceable and in full force and effect without default thereunder;

WHEREAS, the term of the Franchise expired on or about April 17, 2016 and the Franchisee is operating lawfully pursuant to its terms until such time as the term of the Franchise is extended;

WHEREAS, the Franchisee and the Franchisor have negotiated mutually acceptable amendments to the Franchise which are outlined in this Ordinance.

NOW, THEREFORE, the City Council for the City of Kimball HEREBY ORDAINS:

That ORDINANCE 651 is hereby repealed in its entirety and the following ORDINANCE 651 is re-enacted in its place:

Section 651.01: SHORT TITLE AND DEFINITIONS.

Subd. 1. Short Title. This Franchise Ordinance shall be known and cited as the Arvig Cable Ordinance.

Subd. 2. Definitions. For the purpose of this Franchise, 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 words “shall” or “must” are 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.
- b. “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.
- c. “Cable Services” or “Service” means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interactions, if any, which is required for the selection or use of such video programming or other

CHAPTER 6 LICENSED ACTIVITIES

programming service pursuant to Minn. Stat. 238.01, et seq. and 47 U.S.C. § 521 et seq., as may be amended from time to time.

- d. “Cable System” or “System” shall have the meaning specified for “Cable System” in the Cable Act. Unless otherwise specified, it shall in this document refer to the Cable System utilized by the Grantee in the City under this Franchise.
- e. “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation.
- f. “City” means the City of Kimball, Minnesota, a municipal corporation, in the State of Minnesota.
- g. “City Council” means the Kimball, Minnesota City Council.
- h. “Class IV Channel” means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the communications system.
- i. “Drop” means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.
- j. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- k. “Franchise” or “Cable Franchise” means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546) issued by the City and granted by ordinance pursuant to Minnesota law, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificates agreement, or otherwise, which authorizes the construction or operation of a cable system.
- l. “Franchise Area” means the corporate boundaries of the City as they exist from time to time.
- m. “Franchisee” means Melrose Telephone Company, its assignees and successors.
- n. “Franchise Fee” means the fee assessed by the City to Grantee, in consideration of Grantee’s right to operate the Cable System within the City’s Streets and rights of way, determined in amount as a percentage of Grantee’s Gross Revenues and limited to the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E).
- o. “Franchisor” means the City of Kimball, Minnesota.
- p. “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).
- q. “Gross Revenues” are defined to include revenues received by Grantee from Cable Service Subscribers in the City for the provision of video services, to include what is now known as Basic Entertainment, Home Entertainment, Life and Leisure Entertainment, Total Entertainment, and Premium channels, over the Cable System, but shall not include

CHAPTER 6 LICENSED ACTIVITIES

any taxes on cable service which are imposed directly or indirectly on any subscriber thereof if by any governmental unit or agency and which are collected by the Franchisor on behalf of such governmental unit or agency.

- r. “Grantee” is Melrose Telephone Company, a Minnesota Corporation, its agents and employees, lawful successors, transferees or assignees.
- s. “Minnesota Cable Communications Act” means the provisions of Minnesota law governing the requirements for a cable television franchise as set forth in Minn. Stat. § 238, et. seq., as amended.
- t. “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.
- u. “Normal Operating Conditions” means those service conditions which are within the control of Franchisee. Those conditions which are not within the control of Franchisee, include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.
- v. “Pay Television” or “Pay Service” means programming (such as certain on-demand movie channels or pay per-view programs) offered individually to Subscribers on a per-channel, per-program or per event basis.
- w. “PEG” means public, educational and governmental.
- x. “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- y. “Right-of-Way” or “Rights-of-Way” means the area on, below or above any real property in the Franchise Area in which City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including any other Rights-of-Way dedicated for travel purposes and utility easements.
- z. “Rights-of-Way Ordinance” means such ordinance adopted by the City creating requirements regarding regulation, management and use of Rights-of-Way including registration and permitting requirements.
- aa. “Street” shall mean the surface of and the space above and below any public Street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by City which shall, within its proper use and meaning in the sole opinion of City, entitle Franchisee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a Cable System.
- bb. “Subscriber” means a Person who lawfully receives Cable Service.

Section 651.02: GRANT OF AUTHORITY AND GENERAL PROVISIONS.

CHAPTER 6 LICENSED ACTIVITIES

Subd. 1. Grant of Franchise. The City Council of Kimball hereby grants a cable communications franchise for the installation, operation and maintenance of a cable communications system within the City of Kimball to Melrose Telephone Company, provided however that the franchise shall be subject to the terms and performance conditions contained herein.

Subd. 2. FRANCHISE REQUIRED. It shall be unlawful for any person to construct, operate or maintain a System or provide Service in City unless such Person shall first obtain and hold a valid Franchise. All cable communications franchises granted by the City shall contain terms and conditions no more favorable or less burdensome than those contained herein in accordance with the provisions of Minn. Stat. chapter 238.08 subd. 1(b). The provisions of this paragraph shall not apply when the area in which the additional franchise is being sought is not actually being serviced by any existing cable communications system holding a franchise for the area.

Subd. 3. COMPLIANCE WITH STATE AND FEDERAL LAWS. The Franchisee and the Franchisor shall conform to all state and federal laws and rules regulating cable communications as they become effective.

Subd. 4. FRANCHISE TERM. This Franchise shall be in effect for a period of ten (10) years from the date of acceptance by Franchisee, unless sooner renewed, revoked, or terminated in accordance with law.

Subd. 5. FRANCHISE EXCLUSIVITY. This franchise shall be non-exclusive. The City may grant additional franchises at any time.

Subd. 6. SALE OR TRANSFER OF THE FRANCHISE; SALE OR TRANSFER OF STOCK.

- a. Any transfer of franchise by sale, lease or other assignment, or any sale or other transfer of stock of the Franchisee so as to create a new controlling interest, shall be subject to the approval of the Franchisor. The Franchisor has 120 days from the submission of information regarding the successor's ability to operate in accordance with the terms of this Ordinance to purchase or approve or disapprove the transfer. Approval of a transfer shall not be unreasonably denied. Approval may be denied only upon a finding that the successor does not have the ability or capability to operate the franchise in accordance with the terms of this Ordinance and this franchise. Approval may be conditioned upon such reasonable terms and conditions which are not in conflict with state and federal laws and regulations.
- b. No transfer or lease of the rights granted herein shall be effective until the successor or lessee shall have filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale or lease, accepting the terms contained herein, and agreeing to perform all conditions required of the franchise. At that time, the successor or lessee shall also file with the City Clerk a duly executed bond, fully complying with any bonding requirements of this Ordinance.

Subd. 7. ACCESS TO FINANCIAL RECORDS. The City is granted the authority to audit the Franchisee's accounting and financial records upon reasonable notice. Upon request, the Franchisee shall file with the City reports of gross revenues and other information as the City deems appropriate.

Subd. 8. RATES, RATE CHANGE PROCEDURE AND RESIDENTIAL SUBSCRIBER CONTRACTS.

CHAPTER 6 LICENSED ACTIVITIES

- a. Rates. Prior to offering service to any member of the general public, the Franchisee shall prepare a clear and concise list of all current subscription rates and charges, including all installation and disconnect charges, charges for optional services and charges or deposits for the use of equipment offered to subscribers for use with the service. A verified copy of Franchisee's list of rates and charges shall be filed with the Kimball City Administrator/Clerk and shall be available for public inspection at the office of the City Administrator/Clerk. An amended list of rates and charges shall be prepared and filed with the City Administrator/Clerk at any time there is any change or adjustment in the subscription rates and charges.
- b. Residential Subscriber Contract. The Franchisee shall file with the City Clerk a copy of the then current residential subscriber contract(s), if a written contract exists. The subscriber contract(s), and/or the summary of the terms of the non-written contract on file with the City Clerk shall be open to inspection by the public and shall govern the contractual relationship between the franchisee and all subscribers receiving equivalent service under the authority of this ordinance, except service provided to institutions, business premises or multiple housing locations, which service may be governed by separate written contract.
- c. Rate Regulations. The City reserves the right to seek certification by the FCC to engage in the regulation of rates, and implement reasonable regulations during the term of the franchise as permitted by law and/or the FCC. The City also reserves the right when allowed by law, to regulate rates for the installation and rental of equipment for the hearing impaired.

Subd. 9. FRANCHISE ADMINISTRATOR. The City Clerk, under the direction of the Kimball City Council, shall be responsible for continuing administration of the franchise. The City Council shall retain ultimate authority for the administration of a franchise.

Subd. 10. LIABILITY INSURANCE. The Franchisee shall indemnify and hold harmless the City at all times during the term of the franchise and shall maintain throughout the term of the franchise insurance as follows:

Liability for damage to property	\$300,000.00
Liability for personal injury	\$500,000.00 per person
	\$1,000,000.00 per occurrence

These policies shall insure both the City and the Franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the franchise. A Franchisee shall provide the City with evidence of required coverage upon request.

Subd. 11. INDEMNIFICATION.

- a. Except in instances where the City or its employees are negligent, the Franchisee shall hold the City harmless from any and all claims and actions, litigations and from damage arising out of the construction, erection, installation, maintenance or operation of its property operated by authority of this Ordinance within the corporate limits of the City or the negligence of the Franchisee's employees in the operation thereof. The Franchisee shall defend in the name of the City any claims made against the City arising out of the franchise. The Franchisee also agrees to hold the City harmless from any and all claims and actions arising from alleged infringements of copyrights.

CHAPTER 6 LICENSED ACTIVITIES

- b. Nothing contained in a franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injury to 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.

Subd. 12. PERFORMANCE BOND. Prior to beginning construction, and within a reasonable timeframe, the Franchisee shall obtain any permits required under City Code and furnish any security required therefore.

Subd. 13. CONSTRUCTION STANDARDS.

- a. Permits. The Franchisee shall obtain any required permits before construction of any communications system facilities, including the opening or disturbance of any street, sidewalk, driveway or public place. If the Franchisee fails to meet the conditions of the permit, the Franchisor, after reasonable notice to the Franchisee, and providing Franchisee the opportunity to remedy said complaint, can cause said problem to be remedied and bill the Franchisee for the costs incurred in so remedying.
- b. Compliance with Codes. All wire, 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.
- c. Relocation of Wires. In the event it becomes necessary for the City to relocate or remove the Franchisee's wires, conduits, cables and other property located in any street, right-of-way or public place to facilitate the undertaking of a public improvement which affects the cable equipment, Franchisee shall make all necessary changes in its equipment at its own expense, as requested, upon due notice from the City Council or its designated officer.
- d. Undergrounding. In those areas of the City where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall construct, operate, and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers, and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures. Any new lines, wires, conduit or cables shall be installed underground unless it is to replace existing above ground facilities in order to maintain existing services.
- e. Restoration. Upon completion of the work, the Franchisee must restore the general area of the work, including paving and its foundations, to the same condition that existed prior to commencement of the work and must exercise reasonable care to maintain the same condition for two (2) years thereafter. The work must be completed as promptly as weather permits. If the Franchisee does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the public ground to the same condition, and upon reasonable notice to the Franchisee and opportunity to remedy, the City may put it in the same condition at the expense of the Franchisee. The Franchisee must, upon demand, pay to the City the direct and indirect cost of the work done for or performed by

CHAPTER 6 LICENSED ACTIVITIES

the City, including but not limited to the City's administrative costs. To recover its costs, the City may first draw any security posted by the Franchisee and then recover the balance of the costs incurred from the Franchisee directly by written demand. This remedy is in addition to any other remedies available to the City.

- f. Franchisee Initiated Relocation. The Franchisee shall give the City written notice prior to a Franchisee initiated relocation of facilities. A Franchisee initiated relocation shall be at the Franchisee's expense and must be approved by the City, such approval not to be unreasonably withheld.
- g. City Required Relocation. The Franchisee must promptly and at its own expense, with due regard for seasonal working conditions, permanently relocate its facilities whenever the City requires such relocation.
- h. Relocation Where Public Ground Vacated. The vacation of public ground does not deprive the Franchisee of the right to operate and maintain its facilities in the City. If the vacation proceedings are initiated by the Franchisee or by the City, the Franchisee must pay the relocation costs. Any other Person requesting relocation removal of the Franchisee's property shall, as a condition of such request, be required to pay to the Franchisee in advance an amount of money sufficient for reimbursement of all costs of such relocation or removal.
- i. Notice. If the Franchisee is in default in the performance of the work authorized by the permit, including but not limited to restoration requirements, for more than thirty (30) days after receiving written notice from the City of the default, the City may terminate the rights of the Franchisee under the permit. The notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the Franchisee by personally delivering it to an officer thereof at its principal place of business in Minnesota or by certified mail to that address.
- j. City Action on Default. If the Franchisee is in default in the performance of the work authorized by the permit, the City may, after the above notice to the Franchisee and failure of the Franchisee to cure the default, take such action as may be reasonably necessary to abate the condition caused by the default. The Franchisee must reimburse the City for the City's reasonable costs, including costs of collection and attorney fees incurred as a result of the Franchisee default. The security posted under Subd. 12 ("Performance Bond") will be applied by the City first toward payment for such reimbursement.
- k. Use of Public Ground. Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of public ground. The facilities are subject to additional conditions of the permit as established by the City including but not limited to (i) the right of inspection by the City at reasonable times and places; (ii) the obligation to relocate the facilities pursuant to Subd. 14 (c) and (d); and (iii) compliance with all applicable regulations imposed by the Minnesota Public Utilities Commission and other state and federal law, including prompt compliance with the requirements of the Gopher State One Call program, Minnesota Statutes Chapter 216D.
- l. Location. The facilities must be placed in a location agreed to by the City. The Franchisee shall give the City forty-five (45) days advance written notice of the Franchisee's proposed location of new facilities within the public ground. No later than forty-five (45) days after

CHAPTER 6 LICENSED ACTIVITIES

the City's receipt of the Franchisee's written notice, the City will notify the Franchisee in writing of the City's acceptance or rejection of the proposed location. If the City rejects the Franchisee's proposed location, the City shall propose alternative locations. The City does not waive or forfeit its right to reject the location of facilities by failure to respond within the forty-five (45) days.

- m. Emergency Work. The Franchisee may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities. In such event, the Franchisee must request a permit, if applicable, not later than the second working day thereafter and comply with the applicable conditions of the permit. In no event may the Franchisee undertake such an activity which will result in the closing of a street or alley without prior notification to the City.
- n. Street Improvements - Paving and Resurfacing. By May 15 of each year, to the extent practicable, the City will give the Franchisee written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain (i) the nature and character of the improvements; (ii) the streets upon which the improvements are to be made; (iii) the extent of the improvements, the time when the City will start the work; and, (iv) if more than one street is involved, the sequence in which the work is to proceed.
- o. Franchisee Protection of Facilities. The Franchisee must take reasonable measures to prevent the facilities from causing damage to persons or property. The Franchisee must take reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property, or the elements. The Franchisee must take specific protective measures when the City performs work near the facilities. The City shall be responsible for repair costs associated with damage caused by negligence of City employees or contractors working on behalf of the City.
- p. Prior Service Connections. In cases where the City is undertaking the paving or resurfacing of streets and the facilities are to be located under such street, the Franchisee may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five (5) year period following the paving or resurfacing.
- q. Public Ground Other Than Right-Of-Way. Nothing in this ordinance is intended to grant to the Franchisee authority beyond that given by Minnesota Statutes §222.37 for use of the public right-of-way for construction and operation of facilities. If the City allows the Franchisee to use its non-right-of-way public ground, the terms of this ordinance apply to the extent they are consistent with the contract, statutory and common law rights the City owns in such property.

Subd. 14. TECHNICAL STANDARDS AND SPECIAL TESTING. The rules of the FCC related to cable communications systems contained in subpart K of part 75 of the FCC's rules and regulations (as amended) related to cable communications systems are incorporated herein by reference. The results of any tests required by the FCC shall be filed within 10 days of the conduct of such tests within the City. At any time after commencement of service to subscribers, the City may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Requests for such tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance; and

CHAPTER 6 LICENSED ACTIVITIES

such tests will be limited to the particular matter in controversy. The cost of said testing shall be borne by the Franchisee.

Subd. 15. SUBSCRIBER PRIVACY.

- a. No signals of a Class IV cable communications 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 cable communications 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 the Franchisee and its employees for internal business use, or to the subscriber 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 the systems conducting system wide or individually addressed electron sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing.

Subd. 16. SUBSCRIBER COMPLAINTS.

- a. All franchises shall conduct their business in accordance with the customer service standards established by the FCC and 47 C.F.R. § 76.309.
- b. All complaints by the City or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to a franchise granted pursuant to this Ordinance shall be investigated by the Franchisee within two business days and resolved by the Franchisee. Any complaints not resolved to the satisfaction of the complaining party shall be communicated to the City. A record of unresolved complaints may be retained by the City and may be considered by the City Council in making decisions relating to the franchise.
- c. The Franchisee shall provide to the subscriber 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. The Franchisee shall bear the costs of servicing and repairing the Cable System caused by defects in the System or other factors not caused by the Subscriber, its agents, guests or family members. The Subscriber shall pay the costs incurred by Franchisee in servicing and repairing the Cable System caused by the Subscriber, his/her agents, guests or family members.

Subd. 17. UNLAWFUL DENIAL.

CHAPTER 6 LICENSED ACTIVITIES

- a. The Franchisee shall not deny access to cable service because of the income of a resident.
- b. The Franchisee shall not deny access to cable service to a geographical area of the City because of income demographics.

Subd. 18. TERMINATION. The City reserves the right to terminate and cancel any Franchise granted hereunder and rescind all rights and privileges associated therewith in the event that:

1. the Franchisee violates any material provision of this Franchise or is practices any fraud or deceit upon the City;
2. the Franchisee is adjudicated insolvent, enters into receivership or liquidation, files an application for bankruptcy or for composition of creditors, is unable to pay its debts as they mature or is in financial difficulty or sufficient consequence so as to jeopardize the continued operation of the Cable System;
3. the Franchisee commits any material violation of any FCC or applicable state order or ruling or the order or ruling of any other governmental body having jurisdiction over the Franchisee, unless the Franchisee is lawfully contesting the legality or applicability of such rule or order; or
4. the Franchisee knowingly fails to provide Cable Service to a substantial portion of lawful Subscribers in the Franchise Area for a period of thirty (30) or more days. Franchisee shall not be responsible for failure to provide Cable Service to the extent such failure results from events not within Franchisee's control, including, but not limited to, acts of God, strikes, inability to obtain materials or contract labor, sabotage, riots or civil disturbances, loss of utilities and natural disasters.

Upon the occurrence of any of the above-listed events, the City shall provide the Franchisee with written notice citing the reasons alleged to constitute cause for termination of the Franchise. The City shall allow the Franchisee a reasonable time, but in any event no less than thirty (30) days subsequent to receipt of the notice, in which to remedy the cause. If, during such period, the cause is remedied to the satisfaction of the City, the City shall declare the notice to be null and void. If the cause is not remedied to the satisfaction of the City during such period, the City shall provide the Franchisee with an opportunity to be heard at a public hearing before the City prior to adoption of any action for the termination of the Franchise.

In the event that the City takes any action to terminate the Franchise, the Franchisee shall have a period of thirty (30) days, beginning the day next following the date at which action to terminate the Franchise is ordered, within which to file an appeal with a court of competent jurisdiction.

Subd. 19. ABANDONMENT. The Franchisee may not abandon any portion of the cable communications service provided under a franchise without three (3) months prior written notice to the City. Franchisee must compensate the Franchisor for damages resulting to it from such abandonment. Further, upon abandonment of any Franchise property, ownership of said abandoned property transfers to the City.

Subd. 20. REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE: Upon termination or forfeiture of a franchise, the Franchisee shall remove, if the franchising authority so requests within thirty (30) days of notice of termination or forfeiture, all of its above ground plants, structures, works, pipes, mains, conduits, cables, poles and wires and refill at its own

CHAPTER 6 LICENSED ACTIVITIES

expense any excavation that shall be made by it and shall leave said streets, alleys, public ways and places, in as good condition as that prevailing prior to the Franchisee's removal of equipment and appliances. In the event the Franchisee fails to do so; the Franchisor may charge Franchisee for actual cost of removal and clean up.

Subd. 21. MUNICIPAL RIGHT TO PURCHASE SYSTEM. In the event that Franchisee decides to sell or otherwise transfer the Franchise and/or Cable System, the City shall have a first right of refusal to purchase the Franchise and/or Cable System on terms substantially identical to those of any prospective purchaser's bona fide offer. The Franchisee shall give written notice of the terms and conditions of a prospective sale to the City at least sixty (60) days prior to the proposed closing date of such sale. In the event the City does not, within fifty (50) days from the receipt of such notice, give written notice to Franchisee of its intent to exercise the option to purchase on identical terms and conditions, the Franchisee may sell or otherwise transfer the Franchise and/or Cable System on those terms and conditions. In the event the City exercises its option to purchase, the closing date for such a sale shall occur within a reasonable time after such exercise.

Subd. 22. ACCESS CHANNELS.

- a. If requested, 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 (1) 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.
- b. The City reserves the right to establish rules for the administration of the specially designated access channel and establish reasonable rates for the use and administration of the access channel.
- c. If requested, the Franchisee shall make available for public use the minimal equipment necessary for the production and playback of pre-recorded programs for the access channel, including the minimum equipment necessary to make it possible to record programs at remote locations with battery-operated portable equipment.

Subd. 23. FRANCHISE FEE.

- a. During the term of any franchise granted hereunder, the Franchisee shall pay to the City of Kimball at a minimum quarterly, a franchise fee in accordance with the terms of the Resolution granting the franchise. The franchise fee shall be equal to three percent (3%) of Gross Revenues as defined. Each payment shall be accompanied by a brief report from a representative of Franchisee showing the basis for computation. The City may request additional financial information and may audit the Franchisee's accounting and financial records upon reasonable notice

Subd. 24. NON-INTERFERENCE. Installations shall be maintained so as not to interfere with television reception already in existence within the City.

Subd. 25. LINE EXTENSION. The City shall have the right to require reasonable extensions of the Franchisee's transmission and distribution system from time to time, and to make such rules and regulations as may be required to secure adequate and proper service and to provide accommodations for the public. The City may not require an extension into areas where there are less than twenty-five (25) residential units per mile of trunk or distribution cable as is required. The above limitation notwithstanding,

CHAPTER 6 LICENSED ACTIVITIES

Subd. 26. OBSCENITY.

- a. For purposes of this section, obscenity shall mean a program when to the average person applying contemporary community Standards, the program taken as a whole appeals to the prurient interest; the program depicts or describes, in a patently offensive way, sexual conduct, that is, patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated or patently offensive representations or descriptions of masturbation, excretory functions or lewd exhibition of genitals; and the program taken as a whole lacks serious literary, artistic, political or scientific value.

Subd. 27. CONTRADICTIONS WITH STATE OR FEDERAL LAW. Any provisions of this Ordinance or a franchise which are in direct contradiction to any State or Federal law, rule or regulation of cable television franchising, shall be deemed invalid but only to the extent of the contradiction. All other portions of this Ordinance shall continue in full force and effect. As may be possible, all provisions of this Ordinance shall be construed in a manner consistent with State or Federal law so as to maintain the validity of those provisions.

Subd. 28. CABLE SERVICES TO PUBLIC BUILDINGS. Franchisee agrees to provide, free of charge, one outlet of Basic Cable Service and the next highest level of service generally available to all Subscribers, to the locations identified in Exhibit A. Maintenance of said service to the ground block shall be provided free of fees and charges. Additional outlets may be added at time and material expense.

Subd. 29. ADDITIONAL FRANCHISE REQUIREMENTS. The Franchisee shall also be subject to the following terms and conditions:

- a. The Franchisee shall provide customers with reasonable notice of rate changes. “Reasonable notice” shall be a minimum of thirty (30) days.
- b. The Franchisee shall offer customers a device or capability to allow channels to be blocked-out.

Subd. 30. ANNEXED AREAS. The City shall give advance Notice to the Franchisee of any plans by the City to annex new property into the City boundaries.

Subd. 31. ENFORCEMENT. The City reserves the right to enforce any violation of this Ordinance by seeking declaratory or injunctive relief in Stearns County District Court. In the event the City is the prevailing party in any such action, the City shall be entitled to judgment for reasonable attorney’s fees incurred in pursuing the action.

Subd. 32. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage and publication.

Dated this 7th day of March, 2017.

Melrose Telephone Company

City of Kimball

By: _____

Mayor: _____

Its: _____

Clerk: _____

EXHIBIT A

FREE CABLE SERVICE LOCATIONS

All City of Kimball City Buildings, including:

City Hall
Fire Hall
Police Department

Additional service(s) will be provided to all other City buildings that may be created or established during the pendency of this franchise.