

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

12/001890

**RESOLUTION APPROVING FRANCHISE AGREEMENT FOR COMMUNITY
ANTENNA TELEVISION SERVICE WITH QWEST BROADBAND SERVICES INC., D/B/A CENTURYLINK**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104 (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the Sarpy County Board of Commissioners have adopted a Resolution regulating those entities granted a permit to operate and maintain a community antennae television (CATV) system within Sarpy County and outside the limits of any incorporated city or village pursuant to Neb. Rev. Stat. §23-383 to 23-388 (Reissue 2007); and,

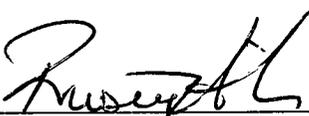
WHEREAS, a CATV permit was issued to US West Communications Inc. (Bk 19 Pg 699) for a period of 15 years. In 2000, US West transferred its ownership interest in its CATV system to Qwest Communications International, Inc and the County Board approved a transfer of the CATV permit (Bk 20, Pg 519), which said permit was set to expire on July 2, 2011. The County Board approved 3 extensions to said permit at Resolutions 2010-379, 2011-359 and 2012-139 such that the CATV permit expires on December 31, 2012. At this time, Qwest Broadband Services, Inc., d/b/a Centurylink wishes to continue its operations and maintenance of the cable television system within Sarpy County with the consent of the County as required under the provisions of the County regulations. To that end, a franchise agreement has been proposed a copy of which is attached hereto; and,

WHEREAS, said franchise agreement is consistent with Sarpy County's authority to regulate CATV systems within Sarpy County.

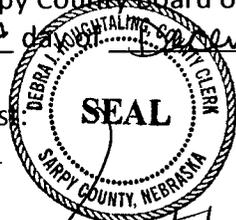
NOW, THEREFORE BE IT RESOLVED by the Board of Commissioners of Sarpy County, Nebraska that pursuant to the provisions of the resolution regulating CATV Operations adopted February 25, 1997, approval is hereby given for franchise agreement with Qwest Broadband Services, Inc., d/b/a Centurylink for a period of 10 years beginning December 4, 2012 until December 5, 2022 and the Chairman and Clerk are hereby authorized to sign the franchise agreement and other such documents as may be necessary to accomplish its purpose.

BE IT FURTHER RESOLVED that this approval is upon Qwest Broadband Services, Inc., d/b/a Centurylink and its successors fully complying with the terms of the resolution regulation CATV operations adopted February 25, 1997 by this Board and all terms and conditions of said franchise agreement.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 4th day of December, 2012.



Sarpy County Board Chairman

Attest:
SEAL 


County Clerk

Sarpy County Board of Commissioners

1210 GOLDEN GATE DRIVE
PAPILLION, NE
593-4155
www.sarpy.com

ADMINISTRATOR Mark Wayne
DEPUTY ADMINISTRATOR Scott Bovick
FISCAL ADMIN./PURCHASING AGT. Brian Hanson



COMMISSIONERS

Rusty Hike District 1
Jim Thompson District 2
Tom Richards District 3
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Jim Warren District 5

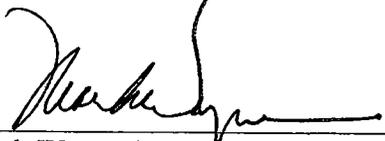
To: Sarpy County Commissioners

From: Mark Wayne, County Administrator

RE: Century Link Franchise Agreement

The Board will be asked to approve a new Franchise Agreement with Century Link at the December 4th County Board meeting. Previous Agreements were far less detailed regarding the rights and responsibilities of both the County and cable company. I would expect to use this agreement as other Franchise Agreements come up for renewal.

Feel free to contact me if you have any questions. I will place this on the Consent Agenda since we had no questions during the Administrative Briefing.


Mark Wayne County Administrator

COUNTY, NEBRASKA

QWEST BROADBAND

SERVICES INC. D/B/A CENTURYLINK

CABLE FRANCHISE AGREEMENT

2012

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AGREEMENT

THIS AGREEMENT, made and entered into this 4th day of December, 2012, by and between the COUNTY OF Sarpy, a political subdivision, hereinafter referred to as "County", and Qwest Broadband Services Inc. (QBSI) d/b/a CenturyLink a Colorado corporation with a local business office at 1314 Douglas Street, Omaha, Nebraska, 68102, hereinafter referred to as "Company".

WITNESS THAT:

WHEREAS, July 2, 1996, the County entered into an Agreement granting Company a cable television franchise ("Franchise"); and

WHEREAS, in accordance with Section 546 of the Cable Communications Policy Act of 1984, as amended, (Pub. L. No. 98-549, 98 Stat. 2779 (codified at 47 U.S.C. § 521 et seq. hereinafter "Cable Act") Company has requested renewal of its Franchise in the County; and

WHEREAS, the County is authorized to grant one or more nonexclusive cable franchises pursuant to applicable state and federal law; and

WHEREAS, the County has found Company to be financially, technically and legally qualified to operate the Cable System; and

WHEREAS, the County has determined that the grant of a nonexclusive franchise to Company is consistent with the public interest; and

WHEREAS, the County and Company have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of the renewal of the Franchise the County and Company hereby agrees as follows:

ARTICLE I. GENERAL

Section 1. **DEFINITIONS.** For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the

plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(a) Board "Applicable Laws" means that this Agreement is subject to and shall be governed by all requirements of the Cable Communications Policy Act of 1984, 47 U.S.C. § 5231 et seq., and any amendments thereto, including the 1996 Act, and other federal and state laws and regulations and local laws, ordinances and regulations governing cable communications.

(b) "Basic Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational and governmental ("PEG") access programming.

(c) "Cable Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as the same may be amended from time to time.

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

(e) "Cable System" means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any public Right-of-Ways; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Subchapter II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of Section 541(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with Section 573 of the Cable Act; or (5) any facilities of an electric utility used solely for operating its electric system.

(f) "Channel" shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), meaning 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 Federal Communications Commission by regulation.

(g) "County" is the County of Sarpy, a political subdivision, in the State of Nebraska.

(h) "County Board" means the governing body of the County of Sarpy, Nebraska.

(i) "Company" is Qwest Broadband Services Inc. (QBSI), and its lawful and permitted successors, assigns and transferees.

(j) "Converter" means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all signals included in the Basic Service delivered at designated Converter dial locations.

(k) "Day" unless otherwise specified shall mean a calendar day.

(l) "Dedication" shall be limited to those rights-of-way for the benefit of the public and controlled by County, the terms, conditions or limitations upon which are not inconsistent with the erection, construction or maintenance of a Cable System, its structures or equipment.

(m) "Easement", unless the context otherwise indicates, shall mean those rights-of-way owned by the County, the terms, conditions or limitations upon which are not inconsistent with the erection, construction or maintenance of a Cable System, its structures or equipment.

(n) "Expanded Basic Service" refers to the next tier of service above the Basic Service tier excluding premium or pay-per-view services.

(o) "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(p) "Franchise Fee" includes any tax, fee, or assessment of any kind imposed by the County or other Governmental Entity on Company or Subscriber, or both, solely because of

their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Company for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17. Franchise Fee as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 542.

(q) "Gross Revenues" shall mean all revenue derived by the Company and any affiliate, subsidiary, parent, or any Person in which the Company has a financial interest, from the provision of Cable Service pursuant to this Agreement. Provided, "Gross Revenues" shall include, but not be limited to:

- (1) revenue derived from any tier of Cable Service;
- (2) revenue derived from optional premium Cable Services;
- (3) revenue derived from Pay Television Cable Service;
- (4) revenue derived from Installation, disconnection, reconnection and changes-in-service;
- (5) late fees;
- (6) Franchise Fees;
- (7) revenue derived from leased Channel fees for commercial leased access programming and services;
- (8) Converter rentals;
- (9) studio rental, production equipment and personnel fees,
- (10) net advertising revenues from the provision of Cable Services over the Cable System
- (11) revenues from program guides and electronic guides;

(12) revenues from home shopping, and other revenue-sharing arrangements;

(13) additional outlet fees; and

(14) all revenues derived from any ancillary services related to the provision of Cable Service pursuant to this Franchise. The parties agree that ancillary services do not include "telecommunication" service or "information" services as those terms are defined by Federal law.

(15) revenue received by any entity other than the Company where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees.

(16) "Gross Revenues" shall not include:

(i) bad debt.

(ii) any taxes on services furnished by the Company which are imposed directly on any Subscriber or user by the State, County or other governmental unit and which are collected by the Company on behalf of said governmental unit. The Franchise Fee is not such a tax.

(iii) revenue from or fees for any services other than Cable Services or from services that are not provided to Subscribers via the Cable System.

(17) The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing Applicable Law. If there is a change in federal law subsequent to the Effective Date of this Franchise, such change shall not impact this Gross Revenues definition unless the change specifically preempts the affected portion of the definition above.

(r) "Highway" is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway shall include Street or alley.

(s) "Installation" shall mean the connection of the Cable System from a feeder cable to a Subscribers' residence or place of business.

(t) "Living Unit" shall mean a distinct address in the QC network inventory where QC currently has, had in the past, or had planned to provide service to a customer. This

includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

(u) "Normal Business Hours" means those hours during which most similar businesses in County are open to serve Customers. In all cases, "Normal Business Hours" must include some evening hours, at least one (1) night per week and/or some weekend hours.

(v) "Normal Operating Conditions" means those service conditions which are within the control of Company. Those conditions which are not within the control of Company 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 Company 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 facilities used to provide Cable Services.

(w) "Other Programming Service" means information that a cable operator makes available to all Subscribers generally.

(x) "Pay Television" means the delivery over the System of pay-per-Channel or pay-per-program Cable Service to Subscribers for a fee or charge, in addition to the charge for Basic Service or Other Programming Services.

(y) "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the County.

(z) "Public Property" is any real property owned by the County other than a Highway, Sidewalk, Easement or Dedication.

(aa) "QC" means Qwest Corporation, an affiliate of Qwest Broadband Services Inc. (QBSI) and an indirect wholly-owned subsidiary of CenturyLink, Inc.

(bb) "Remote Terminal" means a Digital Subscriber Line Access Multiplexer (DSLAM) capable of offering Cable Services to Subscribers.

(cc) "Right-of-Ways" means all Highways, Sidewalks, Easements, Dedications and other Public Property in the County.

(dd) "Sidewalk" is that portion of a Highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including parkways, not on private lands.

(ee) "Street" shall mean and include public Streets, avenues, boulevards, Highways, roads, alleys, lanes, viaducts, bridges, public ways and approaches thereto and other public thoroughfares in the County devoted to public use.

(ff) "Subscriber" or "Customer" means any Person, public building or governmental entity within the County that is authorized to receive Cable Service provided by Company.

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

Section 2. **GRANT OF FRANCHISE.**

(a) The County hereby grants to Company a non-exclusive Franchise authorizing Company to utilize facilities erected, constructed and maintained by QC, upon, along, across, above, over and under the Right-of-Ways now in existence and as may be created or established during its term, including any poles, wires, cable, underground conduits, manholes, and other fixtures of QC necessary for the maintenance and operation of a Cable System for the provision of Cable Services by Company in the County. Said right to utilize or occupy shall be subject to causing a minimum interference with the safe and proper use of streets, alleys and other public ways and places, and cause minimum interference with the existing public utility easements.

In cases of any disturbance of pavement, sidewalk, driveway or other surfacing, including grass or vegetation, Company shall at its own expense, replace or restore all said surfacing.

If at any time during the period of this franchise, County lawfully elects to alter or change the grade or location of any street, alley, or other public way, Company shall, upon reasonable notice by County, remove and relocate any of its plies, wires, cables, conduits or other equipment at its own expense, and in each instance comply with the requirements of County.

No poles, wires, cables, conduits or other equipment shall be erected by Company without complying with any and all other requirements that may be lawfully imposed by County and any other governmental entity with regard to said installation. Company shall consult with the appropriate authorities of Sarpy County or other governmental entity prior to said installation.

(b) Absent a change in Applicable Law following the Effective Date of this Franchise, the Company: (1) acknowledges and accepts the County's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary, challenge or attempt to challenge in any claim or proceeding any condition or term of this Agreement or otherwise contend the same to be unreasonable, arbitrary or void or that the County was without power or authority to make such term or condition. The Company accepts and will accept the validity of the terms and conditions of local law as it exists and shall be amended from time to time throughout the term of its Franchise, provided, however, that such amendments enacted or modified after the effective date of this Franchise shall be reasonable and not materially modify the terms of this Franchise, pursuant to the authority of this Agreement, in its entirety; provided, however, that nothing set forth in the foregoing provisions of this paragraph (c) of Section 2 shall prevent or prohibit the Company from receiving the benefit of rights subsequently enacted under federal or state law which preempt any of the terms, provisions and/or obligations hereunder.

(c) This Agreement and the Franchise granted hereunder shall constitute both a right and an obligation to provide Cable Services as set forth herein. The Company's authority under this Agreement is subject to and must be exercised in strict accordance with the provisions of the County Regulations and to the extent, not preempted by applicable state and federal law.

(d) This Franchise does not authorize the provision of any service other than Cable Services or in any way relieve the Company of any obligation to obtain any authorizations, licenses or franchises to use the Right-of-Ways in the County to provide other services. The provisions of this Agreement are not a bar to the imposition of similar, different or additional conditions with respect to the use of the Right-of-Ways in the County in connection with the

provision of services other than Cable Services provided such additional conditions are materially consistent with the conditions imposed on similarly situated Right-of-Way users other than the Omaha Public Power District and the Metropolitan Utilities District. Nothing herein shall be read to prevent Company from providing other non-cable services to the extent consistent with Applicable Law.

(e) The Company promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Company directly involved in the offering of Cable Service in the County or directly involved in the management or operation of Cable System in the County, will also comply with the obligations of this Franchise. However, the parties acknowledge that QC will pull permits and be primarily responsible for the construction and installation of the Cable System in the Public right-of-way, which will be utilized by the Company to provide Cable Services, and QC will own, operate and maintain the Cable System. So long as QC does not provide Cable Service to Subscribers in the County, QC will not be subject to the terms and conditions contained in this Franchise pertaining to the delivery of Cable Services. QC's installation and maintenance of the Cable System in the Public right-of-way shall be governed by Applicable Law. The parties also acknowledge that if and when QC does provide Cable Services to Subscribers, QC will need to obtain a separate cable franchise from the County. To the extent the Company constructs and installs any facilities in the Public right-of-way, such installation will be subject to the terms and conditions of this Franchise.

(f) No Right-of-Ways shall be used by Company if the County determines that such use is inconsistent with the terms, conditions or provisions by which such Right-of-Ways were created or dedicated, or are presently used.

(g) No rights shall pass to the Company by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for:

(1) Any other permit or authorization generally required under the County Regulations for the privilege of transacting and carrying on a business within the County that may be required by the County; or

(2) Any permits or agreements for occupying any other property of the County or private entities to which access is not specifically granted by this Agreement including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the County or a private entity.

(h) The Franchise granted by this Agreement shall be nonexclusive. The County specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Company. If any other wireline multichannel video programming distributor ("MVPD") enters into a written agreement with the County to provide Cable Services or Video Programming to Subscribers in the County, the County, upon written request of the Company, shall permit the Company to construct and/or operate Company's Cable System and provide Cable Service to Subscribers in the County under the exact same agreement as applicable to the new MVPD, if permissible under Applicable Laws. Within one hundred and twenty (120) Days after the Company submits a written request to the County, the Company and the County shall enter into a written agreement or other appropriate authorization (if necessary) containing the exact same terms and conditions as are applicable to the new wireline MVPD.

Section 3. **TERM.** This non-exclusive Franchise shall be in effect for a period of ten (10) years from the date of adoption by the County (the "Effective Date"), unless sooner renewed or lawfully terminated in accordance with the terms hereunder and Applicable Law. Upon acceptance of this Franchise by Company, this Franchise shall supersede and replace any and all previous franchises or amendments thereto granted by the County and held by Company.

Section 4. **AREA TO BE SERVED.** The Company is hereby authorized to provide Cable Services within the jurisdictional boundaries of the County.

(a) In General. Except as otherwise provided herein, where Company chooses to activate a Remote Terminal, Company shall provide Cable Service within seven (7) days of a request by any Person within the County. For purposes of this subsection, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Company, receipt of a written request by Company or receipt by Company of a verified verbal request. Company

shall provide such service at non-discriminatory monthly rates for Residential Subscribers, consistent with applicable law. Company shall not discriminate between or among any individuals in the availability of Cable Service based upon income in accordance and consistent with 47 U.S.C. Section 541(a)(3), or based upon race or ethnicity.

(b) Service to Multiple Dwelling Units. The Company shall offer the individual units of a multiple dwelling unit all Cable Services offered to other Living Units in the County and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Company having legal access to said unit. The County acknowledges that the Company cannot control the dissemination of particular Cable Services beyond the point of demarcation at a multiple dwelling unit.

(c) The Cable System shall be Interconnected with other contiguous cable systems that are owned and operated by Company, QC or an Affiliate, provided that such cable systems are served by the same Headend that serves the County.

(d) Company shall, in accordance with this subsection, Interconnect the Access Channels of the Cable System with any other contiguous cable system not owned or operated by Company QC or an Affiliate of Company upon the directive of the County. Interconnection of Channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. In the alternative, Company may provide a direct fiber feed to Access origination facilities in order to provide any designated access provider with access programming origination capabilities. The County shall not direct Interconnection except under circumstances where it can be accomplished without undue burden or excessive costs to the Subscribers. Company shall not be required to Interconnect with the other cable system unless the operator of that system is willing to do so and pays for its own cost of constructing and maintaining the Interconnect up to the demarcation point.

(e) Company shall only be required to Interconnect Access Channels with an overbuilder in the County in the event that the County determines in its sole discretion that it would be economically burdensome to its Subscribers to construct and maintain return lines directly from the origination point(s) of the Access Channel(s) versus Interconnecting with Company. In the event Company receives a directive from the County to Interconnect with an overbuilder, Company shall immediately initiate negotiations with the other affected cable

system or systems and shall report to the County the results of such negotiations no later than sixty (60) days after such initiation. The overbuilder shall be responsible for Company's costs in constructing and maintaining the Interconnect. If the parties cannot reach agreement on the terms of the Interconnect, including compensation and timing, the dispute shall be submitted to the County for determination and resolution. Additionally, Company shall only be required to Interconnect with an overbuilder if the overbuilder is providing similar support for Access as required of Company pursuant to this Franchise.

Section 5. **COUNTY AUTHORITY AND PRE-EMPTION.** The Company acknowledges that any right or privilege hereunder is subject to the power of the County to adopt or enforce general regulations necessary to the health, safety and welfare of the public. Company, therefore, specifically agrees and covenants to comply with all applicable provisions of the County Regulations. In the event of a conflict between this Agreement, the County Regulations or applicable regulations of the County, the express provisions of this Agreement shall govern.

(a) Company acknowledges that the County may modify its regulatory policies by lawful exercise of the County's powers throughout the term of this Agreement. Company agrees to comply with such lawful modifications. Company reserves all rights it may have to challenge such County Regulations modifications whether arising in contract or at law. The County reserves all of its rights and defenses to such challenges whether arising in contract or at law, provided, however, that such amendments enacted or modified after the effective date of this Franchise shall be reasonable.

(b) In addition to the inherent powers of the County to regulate and control a franchise, and those powers expressly reserved by the County or agreed to and provided for herein, the right and power is hereby reserved by the County to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this Agreement, provided, however, that such amendments enacted or modified after the effective date of this Franchise shall be reasonable.

(c) The County may also adopt such regulations at the request of Company upon application.

Section 6. **COMPLIANCE WITH STATE AND FEDERAL LAWS.**

(a) Notwithstanding any other provisions of this Agreement to the contrary, the Company shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof, provided however, if any such state or federal law or regulation shall require the Company to perform any service, or shall permit the Company to perform any service, or shall prohibit the Company from performing any services, in conflict with the terms of this Agreement or of any law or regulation of the County, then as soon as possible following knowledge thereof, the Company shall notify the County of the point of conflict believed to exist between such regulation or law and the laws or regulations of the County or this Agreement.

(b) Should the County Board determine that a material provision of this Agreement is affected by any subsequent action of the state or federal government, the County Board shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Agreement.

Section 7. **PAYMENT OF FRANCHISE FEE.**

(a) During the term of this Franchise, Company shall pay to County a Franchise Fee in an amount equal to five percent (5%) of Company's Gross Revenues. Upon ninety (90) days advance written notice from the County to Company, County may increase or decrease the Franchise Fee to the extent permissible under Applicable Law, and pursuant to said notice and direction, Company shall pay to County an annual Franchise Fee of up the maximum amount permitted by Applicable Law. At any time during the duration of this Franchise, in the event that the County is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then the County may unilaterally amend this Franchise after holding a public hearing to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Company to the County hereunder, provided that Company has received at least ninety (90) days prior written notice from the County of such amendment.

(b) The Franchise Fee shall be paid annually to the Finance Department of the County by check or other agreed upon means no later than May 1st of each calendar year. The annual payment shall be accompanied by an annual financial report prepared and verified as

accurate by the Company. The report shall reflect the yearly total Gross Revenues, payments to the County, and all relevant financial information.

In the event this Agreement should be terminated or forfeited prior to the expiration of its term, the Company shall immediately submit to the County a financial statement prepared as would otherwise be required, showing the Gross Revenues for the time which has elapsed since the last period for which payment was made. Payment for said period shall be due to the County within thirty (30) days following the termination.

(d) No acceptance by the County of any payment shall be construed as a release or an accord or satisfaction of any claim the County may have for further or additional sums payable hereunder or for any performance or obligation of the Company. The County shall have a right to inspect relevant records of the Company to determine whether the Franchise Fee was paid accurately, and the right to audit and re-compute any amounts payable thereto; provided that such audit shall commence within sixty (60) months following the close of each fiscal year of the Company. In the event the County determines that additional amounts are due, the Company shall pay said amount within thirty (30) days following written notice. Provided that the Company may pay said amount under protest with the right to re-compute the same.

(e) Interest shall be charged daily from the date due for any payment or recomputed amount, cost or penalty not made on or before the applicable date at the annual rate of twelve (12%) percent.

(f) For purposes of the fee to be paid by Company under this Franchise, in the case of Cable Service that may be bundled or integrated functionally with other services, capabilities, or applications of Company, the fee shall be applied only to the Gross Revenues attributable to Company's Cable Service, as reflected on the books and records of Company kept in the regular course of business in accordance with GAAP and Applicable Law.

Section 8. **COSTS.** The Company shall pay all reasonable incidental costs related to the renewal of this Franchise incurred by the County for which reimbursement is allowed pursuant to federal law and the FCC. Payment of said costs shall be made within thirty (30) days following written notice from the County to the Company.

Section 9. **RATES.** The County shall have the right to regulate Company's rates and charges to the maximum extent permitted by Applicable Law. Company agrees to provide notices to the County and Subscribers of changes in rates as required by Applicable Law. Company agrees that it will not discriminate among Subscribers with regard to rates and charges made for any Cable Service based on considerations of race, color, creed, sex, marital or economic status, national origin, or neighborhood of residence; and shall comply with the non discrimination requirements of Applicable Laws.

Section 10. **LETTER OF CREDIT.**

(a) Within ten (10) days after the execution of this Agreement, the Company shall deposit with the County a letter of credit from a financial institution in the amount of \$50,000.00. The form and content of such letter of credit shall be approved by the County Attorney. The letter of credit shall be used to insure the faithful performance by the Company of all provisions of this Agreement and the payment by the Company of any claims, liens and taxes due the County which arise under this Franchise.

(b) The letter of credit shall be maintained at \$50,000.00 during the entire term of the Company's Franchise, even if amounts have to be withdrawn pursuant to subdivision (a) or (c) of this section, and shall remain in effect for sixty (60) days after the conclusion or termination of this Agreement.

(c) If the Company fails to pay to the County any compensation within the time prescribed herein; or fails, after ten (10) Days' notice to pay to the County any taxes due and unpaid; or fails to repay the County within ten (10) Days, any damages, costs or expenses which the County is compelled to pay by reason of any act or default of the Company in connection with this Agreement or law; or fails after three (3) Days' notice of such failure by the County to comply with any provisions of this Agreement or law which the County reasonably determines can be remedied by demand on the letter of credit, the County may immediately demand payment from the letter of credit of the amount thereof, together with interest and any liquidated damages. Upon demand for payment, the County shall notify the Company of the amount and date hereof.

(d) Any right hereunder shall not be deemed exclusive but in addition to all other rights of the County, whether reserved by this Agreement or authorized by law, and no action,

proceeding or exercise of a right with respect to such letter of credit shall adversely affect any other right the County may have.

(e) The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be cancelled by the surety nor the intention not to renew be stated by the surety until sixty (60) Days after receipt by the County, by registered mail, a written notice of such intention to cancel or not to renew."

Section 11. **INSURANCE.**

(a) The Company shall, at its sole expense take out and maintain during the term of this Franchise a general comprehensive public liability insurance policy with a company licensed to do business in the State of Nebraska with a rating by A.M. Best & Co. of not less than "A" that shall protect the Company, County and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Company, its officials, officers, directors, employees and agents or any subcontractors of Company. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Company's vehicles, products and operations in the minimum amount of \$ 2,000,000 combined single limit for property damage and bodily injury per occurrence.

(b) A certificate of insurance in compliance with this section shall be provided to the County within ten (10) Days after the Effective Date of the Franchise and shall, if acceptable to the County Attorney, be approved by the County Attorney. Thereafter, the Company shall immediately advise the County Attorney of any litigation that may develop that would affect this insurance. The policy shall provide coverage on an "occurrence" basis and shall name the County as an additional insured. Standard form of cross-liability shall be afforded. An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Company's operations under this Franchise and that no other insurance maintained by the County will be called upon to contribute to a loss under this coverage.

(c) Prior to the Effective Date, Company shall submit to County a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The certificate and documents evidencing Insurance shall be in a form acceptable to County. Renewal certificates shall be provided to County prior to the expiration date of any of the

required policies. County will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Company of any deficiencies in such documents and receipt thereof shall not relieve Company from, nor be deemed a waiver of, County's right to enforce the terms of Company's obligations hereunder. County reserves the right to require further documentation reasonably necessary to form an opinion regarding the adequacy of Company's insurance coverage.

(d) Neither the provisions of this section nor any damages recovered by the County thereunder shall be construed to limit the liability of the Company under any franchise issued hereunder or for damages.

(e) County reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by County will be no greater than the increase in the State of Nebraska Consumer Price Index (all consumers) for such three (3) year period.

(f) It is hereby understood and agreed that said insurance policy may not be cancelled by the insurer until thirty (30) Days after receipt by the County, by registered mail, of a written notice of such intention to cancel or not to renew.

Section 12. **INDEMNIFICATION.**

(a) The Company shall indemnify, defend and hold the County, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including reasonable attorney's fees and disbursements) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Company's operations, the exercise of this Agreement, the breach by Company of its obligations under this Agreement and/or the activities of Company, its subcontractors, employees and agents hereunder. In the event that suit is brought against the County either independently or jointly with the Company on account thereof, the Company upon notice by the County shall defend the County in any such suit at the cost of the Company. In the event final judgment is obtained against the County either independently or jointly with the Company, the Company

shall indemnify the County for those claims or portions of claims arising out of the Company's operations and pay such judgment with all costs and hold the County harmless therefrom.

(b) The Company specifically agrees that it will pay all reasonable expenses incurred by the County in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all reasonable out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the County Attorney or his assistants, or any other employees of the County or its agents.

(c) The indemnification obligations of Company set forth in this Agreement are not limited in any way by the amount or type of damages or compensation payable by or for Company under workers' compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement or the terms, applicability or limitations of any insurance held by Company. The indemnification of County by Company provided for in this Agreement shall apply to all damages and claims for damages of any kind suffered by reason of any of Company's operations referred to in this Agreement, regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages. The County does not, and shall not, waive any rights against Company which it may have by reason of the indemnification provided for in this Agreement because of the acceptance by County, or the deposit with County by Company, of any of the insurance policies described in this Agreement.

(d) The foregoing indemnity is conditioned upon the following:

The County shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. No recovery by the County of any sum by reason of the Letter of Credit required in Article I, Section 10 hereof shall be any limitation upon the liability of the Company to the County under the terms of this section, except that any sum so received by the County shall be deducted from any recovery which the County might have against the Company under the terms of this section.

ARTICLE II CABLE SYSTEM CONSTRUCTION.

Section 1. **CABLE SYSTEM CONSTRUCTION.** The Company agrees to operate and maintain Cable Services providing a minimum of one hundred (100) Channels of Cable Service to Subscribers in the County in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, and requirements of this Agreement.

Section 2. **REQUEST FOR CONSTRUCTION.** Upon request of the County, the Company shall furnish the County with progress reports indicating in detail any area of construction of the Cable System by the Company.

Section 3. **SUPERVISION BY THE COUNTY.** The Director of Public Works, or a Person appointed by the County Board may, from time to time, issue reasonable rules and regulations concerning the construction, operation and maintenance of the Cable System and the provision of Cable Services as are consistent with Applicable Law and the provisions of this Agreement

Section 4. **IMPROVEMENTS & UPGRADES.** The Company shall at all times during the term of this Agreement upgrade and maintain the Cable System to provide similar technical capabilities, capacity, performance and functionality for the provision of Cable Services as other similarly situated cable systems operated by Company in the United States.

Section 5. **MAP REQUIREMENTS.** Upon request by County, Company will meet periodically with the County to review where the Company currently provides Cable Service within the County, and its plans, if any, to expand such service area. At such meetings or at other times as reasonably necessary, Company will make available to the County a map showing the location of all wires, cables, other conduits, as well as other equipment within the Cable System.

Section 6. **MANDATORY CONTINUITY OF SERVICE.**

(a) It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Company are honored. In the event that QC elects to overbuild, rebuild, modify, or sell the Cable System, or Company gives the County gives notice of intent to terminate or fails to renew its Franchise, the Company shall act so as to

insure that all Subscribers receive continuous, uninterrupted Service regardless of the circumstances. In the event of a change of franchise, or in the event a new operator acquires the Cable System, the Company shall cooperate with the County, new franchisee or operator in maintaining continuity of Service to all Subscribers.

(b) In the event Company fails to operate the Cable System for seven (7) consecutive Days without prior approval of the County or without just cause, the County may, at its option, operate the Cable System or designate an operator until such time as Company restores Service under conditions acceptable to the County or a permanent operator is selected. If the County is required to fulfill this obligation for the Company, the Company shall reimburse the County for all reasonable costs or damages in excess of revenues from the Cable System received by the County that are the result of the Company's failure to perform. The County shall also be entitled to its payment of the Franchise Fee during that period.

Section 7. **MAINTENANCE OF CABLE SYSTEM.** The Company shall erect and maintain all parts of the Cable System in good condition throughout the entire Franchise term in accordance with this Agreement and as provided by Applicable Law.

(a) The Company shall render efficient Service, make repairs promptly, and interrupt Service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during period of minimum Cable System use. Complaint procedures shall be established in the manner provided by the County Regulations.

(b) Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), Company shall prepare and maintain written records of all written complaints made to them relating to the provision of Cable Service and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Company and made available to the County upon request. The Company shall, upon request of the County, annually furnish the County with: (i) a report showing the number of Basic Service tier Subscribers; and (ii) a summary of how the Company resolved all written complaints forwarded to it by the County from Subscribers concerning the operation of the Cable System. The County agrees that it shall use its best efforts to keep any such reports generated by the Company as confidential.

(c) The Company agrees to become and remain, during the term of this Agreement, a member in good standing of the Diggers Hotline of Nebraska, to cooperate with all other members thereof and to abide by all rules, procedures and by-laws.

(d) Company shall provide the County, upon request, with a written report of the results of Company's annual proof of performance and cumulative leakage index tests conducted pursuant to FCC standards and requirements.

Section 8. **CABLE SYSTEM OPERATION.** In addition to all other provisions of law and this Agreement, it is agreed this Cable System shall be installed and maintained in accordance with all applicable technical standards including, at minimum and where applicable, the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

Section 9. **CUSTOMER SERVICE STANDARDS.** The County hereby adopts the Customer service standards set forth in Part- 76, §76.309- of the FCC's -rules and regulations, as amended. The Company shall comply in all respects with the Customer service requirements established by the FCC and those set forth herein.

(a) Company shall maintain a convenient local Subscriber service and bill payment location in the County for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and Subscriber service information. The Company shall comply with the standards and requirements for Subscriber service set forth below during the term of this Franchise.

(b) Cable System office hours and telephone availability:

(1) Company will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a Day, seven (7) Days a week.

(i) Trained Company representatives will be available to respond to Customer telephone inquiries during Normal Business Hours.

(ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine.

Inquiries received after Normal Business Hours must be responded to by a trained Company representative on the next business day.

(2) Under Normal Operating Conditions, telephone answer time by a Customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(3) The Company shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(4) Under Normal Operating Conditions, the Customer will receive a busy signal less than three percent (3%) of the time.

(5) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

(c) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

(1) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to 4000 feet from an activated Remote Terminal capable of providing Cable Service.

(2) Excluding conditions beyond the control of the Company, the Company will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Company must begin actions to correct other Service problems the next business day after notification of the Service problem.

(3) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Company may schedule Service calls

and other Installation activities outside of Normal Business Hours for the express convenience of the Customer.)

(4) Company may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment.

(5) If Company's representative is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Customer.

(d) Communications between Company and Subscribers.

(1) Company will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(i) Products and Services offered;

(ii) Prices and options for programming services and conditions of subscription to programming and other services;

(iii) Installation and Service maintenance policies;

(iv) Instructions on how to use the Cable Service;

(v) Channel positions of programming carried on the Cable System;

and

(vi) Billing and complaint procedures.

(2) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the Company, including the address of the responsible officer of the County.

(3) Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of the Company. In addition, the Company shall notify Subscribers

thirty (30) Days in advance of any significant changes in the information required by Section 9(d)(1).

(4) In addition to the above requirement regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Company shall give thirty (30) Days written notice to both Subscribers and the County before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Company need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(5) To the extent Company is required to provide notice of Service and rate changes to Subscribers, the Company may provide such notice using any reasonable written means at its sole discretion.

(6) Notwithstanding any other provision of this section, Company shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or County on the transaction between the Company and the Subscriber.

(e) Refunds. Refund checks will be issued promptly, but no later than either:

(1) The Customer's next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or

(2) The return of the equipment supplied by the Company if Service is terminated.

(3) If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, the Company shall, upon request

by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.

(f) Credits. Credits for Service will be issued no later than the Customer's next billing cycle following the determination that a credit is warranted.

(g) Billing:

(1) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Service and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, the Company must respond to a written complaint from a Subscriber within thirty (30) Days.

(h) Company shall, upon request, provide County with information which shall describe in detail Company's compliance with each and every term and provision of this Section 9.

(i) Subscriber Contracts.

(1) Company shall, upon request, provide the County with any standard form residential Subscriber contract utilized by Company. If no such written contract exists, Company shall file with the County a document completely and concisely stating the length and terms of the Subscriber contract offered to Customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Company's current Subscriber rates and charges for Cable Service shall be maintained on file with County and shall be available for public inspection.

(j) Late Fees. Company shall comply with all Applicable Laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the Company imposes upon a Subscriber for late payment of a bill. The County reserves the right to enforce Company's compliance with all Applicable Laws to the maximum extent legally permissible.

(k) Disputes All Subscribers and members of the general public may direct complaints, regarding Company's Service or performance to the chief administrative officer of the County or the chief administrative officer's designee, which may be a board or commission of the County.

In the event the County receives complaints regarding the Company's compliance with one (1) or more of the above-referenced standards in this Section 9, the County may request, and the Company shall provide, information and records kept in the Company's normal course of business documenting Company's compliance with the specific term and provision of this Section 9 that is the subject of the complaint. Company shall make a good faith effort to maintain its information and records in a manner so that the County can easily verify Company's compliance with the requirements of Section 9.

Section 10. **SERVICE TO PUBLIC BUILDINGS**

(a) If and when the following below described buildings are within 4,000 feet of an activated Remote Terminal capable of providing Cable Service and such buildings do not currently receive Cable Service from another provider, the Company shall provide free of charge at its own expense and not subject to offset against the License Franchise Fee, and throughout the term of this Agreement, one (1) service drop, two (2) outlets and two (2) Converter units if necessary, and Basic Service and Expanded Basic Service (i.e. together the equivalent of sixty (60) or more Channels of programming) or the future analog or digital equivalent of such service tiers offered by Company in the County ("Complimentary Service"), to all public facilities located in the County which are currently receiving such Complimentary Service as a part of the Existing System, including but not limited to: all public fire stations and police stations; all public libraries; all PEG access facilities designated by the County; all County administrative and operational buildings; all public and private accredited K-12 schools located in the County ("Public Buildings"). reference into this Agreement.

(b) For purposes of this Section 10, the term "Designated Representative" shall include anyone designated by the local governing body responsible for the Public Building in question. The Designated Representative may request that the Company install additional outlets at Existing Locations; provided, however, that the County shall pay the Company for the Installation Costs and for the Basic Service and Expanded Basic Service received at such active additional outlets. For purposes of this Section 10 of this Agreement, "Installation Costs" shall

include only Company's documented cost of: 1) necessary materials, equipment and hardware to complete the installation; and 2) required labor charged at Company's lowest hourly service charge taking into account the classification and skill level of employee(s) needed to perform the functions necessary to complete the installation given the complexity thereof.

(c) If ancillary equipment, such as a Converter, is required to receive Complimentary Service at those two (2) outlets which are included as part of a Complimentary Install after the Effective Date hereof, Company shall not charge therefor. For all other ancillary equipment needed, the Company may charge its standard residential equipment rates to the County or applicable Public Building occupant therefor.

(d) Notwithstanding anything to the contrary set forth in this Section 10 of this Agreement, Company and the County agree that: (i) Company shall not be required to provide a Complimentary Install to any Public Building unless it is technically feasible; (ii) if service is available or could be made available from any other cable television franchisee, then the Company shall have the right of first refusal to provide Complimentary Service and related services which the County may request or require for any new Public Building which is built or acquired by the County in the future; (iii) given the right of first refusal granted herein, in each and every circumstance in which the Company shall be entitled to charge a fee or rate for installation, Service or ancillary equipment being provided to the County or Public Building occupant, the Company shall charge no more than the lowest rate without regard to the scope of services, number of outlets or pieces of equipment involved. The County agrees to remit payment to Company as set forth in Section 10 (h) (iii) for as long as Company maintains that the provision of Complimentary Service to each additional outlet impacts the fees which the Company must pay to its providers of programming.

(e) Nothing in this Section 10 of this Agreement is intended to prevent a separate written agreement between any entity receiving services under the terms hereof and the Company regarding the subject matter hereof. To that end, in the event a separate written agreement with any such entity is negotiated and agreed upon, the Company shall give notice thereof to the County and advise therein as to the provisions of this Franchise which are no longer applicable to such entity. In no event, however, shall Company be relieved of its obligations to meet the requirements of this Section 10 should such a written agreement fail to materialize, be terminated, or expire during the term of this Agreement.

(f) The County acknowledges and agrees that the Company shall have no obligation to provide Complimentary Service to any private person or entity which is leasing space in a Public Building.

ARTICLE III. ADMINISTRATION AND ENFORCEMENT.

Section 1. LIQUIDATED DAMAGES.

(a) For the violation of any of the following provisions of this Franchise, liquidated damages shall be chargeable to the letter of credit as follows:

(1) For failure to maintain records and provide reports as requested by the County and as required herein or by regulation– One Hundred and No/100 Dollars (\$100) per Day.

(2) For failure to restore the letter of credit as required within thirty (30) Days, the entire letter of credit remaining, if any, shall be forfeited.

(3) If the County Board shall adopt a resolution determining that Company has failed to meet the customer service requirements set forth herein for the measurement period just concluded and thereafter Company again fails to meet said customer service requirements for the calendar quarter following, then Company shall pay to County One Thousand and No/100 Dollars (\$1,000) per month for each month in which customer service requirements were not met.

(b) The letter of credit shall become the property of the County in the event that Company's Franchise is cancelled by reason of the default of the Company. The Company, however, shall be entitled to the return of the letter of credit, or portion thereof, as remains on deposit with the Director of Finance at the expiration of the term of this Agreement, provided that there is then no outstanding default on the part of the Company.

Section 3. TERMINATION.

(a) In addition to all other rights and powers retained by the County under this Agreement or authorized by Applicable Law, the County reserves the right to terminate the Franchise and all rights and privileges of the Company hereunder in the event of a substantial

breach of its terms and conditions. A substantial breach of Company shall include, but shall not be limited to, the following:

(1) Violation of any material provision of the Franchise or any material rule, order, regulation or determination of the County made pursuant to the Franchise;

(2) Attempt to dispose of or transfer the Cable System without the County's prior written approval;

(3) Attempt to evade any material provision of the Franchise or practice any fraud or deceit upon the County or its Subscribers or Customers;

(4) Company has practiced fraud or deceit upon County.

(b) The foregoing shall not constitute a major breach if the violation occurs but it is without fault of the Company or occurs as a result of circumstances beyond its control. Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

(c) The County may make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this Franchise. If the violation by the Company continues for a period of thirty (30) Days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the County may place the issue of termination of the Franchise before the County Board. The County shall cause to be served upon Company, at least twenty (20) Days prior to the date of such County Board meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the County Board is to consider.

(d) The County Board shall hear and consider the issue and shall hear any Person interested therein, and shall determine in its discretion, whether or not any violation by the Company has occurred.

(e) If the County Board shall determine the violation by the Company was the fault of Company and within its control, the County Board may, by resolution, declare that the Franchise of the Company shall be terminated, unless there is compliance within such period as

the County Board may fix, such period not to be less than ninety (90) Days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

(f) The issue of termination shall automatically be placed upon the County Board agenda at the expiration of the time set by it for compliance. The County Board then may terminate the Franchise forthwith upon finding that Company has failed to achieve compliance or may further extend the period, in its discretion.

(g) The County or Company may terminate its rights under this Agreement if permitted under federal or state law by providing written notice to the other of not less than one hundred-eighty (180) days prior to the Effective Date of such termination or as otherwise provided for by Applicable Laws.

Section 4. **FORECLOSURE.** Upon the foreclosure or other judicial sale of all or a substantial part of the Cable System, or upon the termination of any lease covering all or a substantial part of the Cable System, the Company shall notify the County of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of this Agreement governing the consent of the County Board to such change in control of the Company shall apply.

Section 5. **RECEIVORSHIP.** The County Board shall have the right to cancel this Agreement one hundred twenty (120) Days after the appointment of a receiver or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) Days, or unless:

(a) Within one hundred twenty (120) Days after this election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Agreement and remedied all defaults thereunder; and

(b) Such receiver or trustee, within said one hundred twenty (120) Days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Agreement and all Applicable Laws.

ARTICLE IV RIGHTS UPON TERMINATION

Section 1. **RIGHT TO REQUIRE REMOVAL OF PROPERTY.** Upon termination, cancellation as a result of receivership, or the expiration of the term for which the Franchise is granted provided no renewal is granted, the County shall have the right to require Company to remove at Company’s own expense all or any part of the Company’s Cable System from all Streets and public ways within the County. If Company fails to do so, the County may perform the work and collect the cost thereof from Company. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Company effective upon filing of the lien in accordance with Applicable Laws.

Section 2. **CONTINUITY OF SERVICE MANDATORY.** Company shall make its best effort to ensure that all Subscribers receive continuous uninterrupted Cable Service so long as their financial obligations to Company are honored. In the event of purchase, lease-purchase, acquisition, sale, lease, or other transfer to any other Person, including any other operator of a cable communications franchise, Company shall cooperate fully with the County to operate the Cable System in accordance with the terms and conditions of this Agreement through the transition, to maintain continuity of Service to all Subscribers.

ARTICLE V. MISCELLANEOUS PROVISIONS.

Section 1. **NOTICES.** All notices, reports, or demands required to be given in writing under this Agreement shall be deemed to be given when delivered personally to any officer of Company or County’s authorized agent forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

To County:

Sarpy County Clerk
1210 Golden Gate Drive,
Papillion, NE 68046-2894

With a courtesy copy to:

County Attorney
1210 Golden Gate Drive
Papillion, NE 68046

To Company:

Qwest Broadband Services Inc. d/b/a CenturyLink
Attn: Public Policy
1801 California Street, Floor 10
Denver, CO 80202

With a courtesy copy to:

CenturyLink
Attn: Public Policy/Government Affairs
1314 Douglas on The Mall
Omaha, NE 68102

(a) Such addresses may be changed by either party upon notice to the other party given as provided in this section.

(b) Company shall also maintain a local point of contact with a local or toll-free telephone number for the conduct of matters related to this Agreement during Normal Business Hours.

Section 2. **BOOKS AND RECORDS.**

(a) All books and records of the Company necessary to ensure compliance with this Agreement shall be made available to the County or its representatives at a location within the County or as otherwise mutually agreed to by the parties. To the extent it is necessary for County to send representatives to a location outside of the County to inspect Company's books and records, Company shall be responsible for all reasonable travel costs incurred by County representatives.

(b) Upon request by the County, the Company agrees to provide either a list of all shareholders holding ten percent (10%) or more of the outstanding shares of Company or a chart or similar document stating the ownership structure of the Company that includes the ultimate parent company. Upon request, the Company shall provide the County with copies of publicly available financial reports that the Company files with any government agency.

Section 3. **RELOCATION.** Whenever the County, or State of Nebraska shall require the relocation or reinstallation of any property of the Company, it shall be the obligation of the Company, upon written notice of at least thirty (30) Days, to immediately remove and relocate

or reinstall said property at the expense of the Company, as may be reasonably necessary to meet the requirements of the County, or State. Company may charge the appropriate party for relocations made at the request of a third party.

Section 4. **ADMINISTRATION.** The County Board may appoint a staff Person who shall be responsible for the continued administration of the Company's Franchise. Notice of such appointment shall be conveyed to the Company.

Section 5. **REMOVAL OF FACILITIES.** Upon termination of Service to any Subscriber, at the written request of the Subscriber the Company shall at its own expense, promptly remove all of its facilities and equipment from the premises of such Subscriber.

Section 6. **OTHER PETITIONS AND APPLICATIONS.** Upon request of the County, Company shall provide copies of public filings submitted by the Company to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the Cable System or Cable Services authorized pursuant to the Franchise.

Section 7. **COMPANY RULES AND REGULATIONS.** The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations, and to assure an uninterrupted Service to each and all of its Customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or Applicable Laws.

Section 8. **PARENTAL CONTROL.** The Company shall provide adequate security provisions in its Subscriber equipment to permit parental control over the use of Cable Services on the System consistent with federal law.

Section 9. **TRANSFER OF OWNERSHIP OR CONTROL.**

(a) The Company agrees that its Franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest into any Person without the prior written consent of the County. Company may, however, transfer or assign the Franchise to a wholly owned subsidiary of the Company or its affiliate and such

affiliate may transfer or assign the Franchise back to the Company without such consent. The proposed assignee must show legal, technical and financial responsibility as determined by the County and must agree to comply with all provisions of the Franchise. County shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to Company within one hundred and twenty (120) Days following receipt of written notice of the proposed transfer or assignment.

(b) The Company shall promptly notify the County of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Company. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Company shall make the Franchise subject to cancellation unless and until the County shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the County may inquire into the qualification of the prospective controlling party, and the Company shall assist the County in any such inquiry.

(c) The consent or approval of the County to any assignment, sale, transfer, or sublet, shall not constitute a waiver or release of any pending violations of this Franchise, known or unknown to the County or Company, nor any enforcement rights of the County under the County Regulations or this Franchise.

Section 10. **EMINENT DOMAIN.** Nothing herein shall be deemed or construed to impair or affect, in any way to any extent, the right of the County to acquire the property of the Company through the exercise of eminent domain, at a fair and just value, which shall not include any amount for the Franchise itself or for any of the rights or privileges granted, or for relocation, and nothing shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the County's right to eminent domain.

Section 11. **COMPANY TO HAVE NO RECOURSE.** Except as expressly provided in this Agreement, the Company herein shall have no recourse whatsoever against the County for any loss, cost or expense or damage arising out of any of the provisions or requirements of this Agreement or law or because of the enforcement thereof by the County, nor for the failure of the County to have the authority to grant all or any part of any franchise. The Company expressly acknowledges that, in accepting its Franchise by executing this Agreement, it did so

relying upon its own investigation and understanding of the power and authority of the County to grant a franchise. By accepting its Franchise and becoming signatory hereto, the Company acknowledges that it has not been induced to enter into this Agreement by any understanding or promise or other statement, whether verbal or written, by or on behalf of the County or by any other third Person concerning any term or condition not expressed herein. The Company further acknowledges by the acceptance of its Franchise that it has carefully read the terms and conditions hereof, and of law, and is willing to and does accept all of the risks of the meaning of such terms and conditions. All Parties have participated in the drafting of this Agreement and have approved all of its terms and provisions. Accordingly, the Parties waive the application of any rule of law to the effect that ambiguous or conflicting terms or provisions shall be interpreted or construed against the Party who prepared the executed document.

Section 12. **FAILURE OF COUNTY TO ENFORCE THIS AGREEMENT — NO WAIVER OF THE TERMS THEREOF.** The Company shall not be excused from complying with any of the terms or conditions of this Agreement or the law by any failure of the County upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

Section 13. **TIME ESSENCE OF THIS AGREEMENT.** Whenever this Agreement shall set forth any time for any action to be performed by or on behalf of the Company, such time shall be deemed of the essence and any failure of the Company to perform within the time allotted shall always be sufficient grounds for the County to seek termination or other appropriate remedy.

Section 14. **ABANDONMENT.** Any property abandoned by the Company shall become, at the option of the County, property of the County and the Company agrees to execute and deliver an instrument in writing, transferring its ownership interest in any such property to the County.

Section 15. **NON-DISCRIMINATION.** The Company shall at all times comply with all applicable local, state, and federal statutes and regulations regarding civil rights and equal opportunity employment, including Title VI of the Civil Rights Act of 1964; the Rehabilitation Act of 1973, Public Law 93-112; the Americans With Disabilities Act of 1990, Public Law 101-336; and the Nebraska Fair Employment Practice Act, NEB. REV. STAT. §§ 48-1101 to 48-1125.

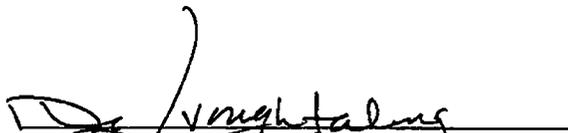
Section 16. **SEVERABILITY.** If any section, subsection, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 17. **EFFECTIVENESS OF AGREEMENT.** This Agreement shall be effective from and after execution of the same by the County and shall remain in effect throughout the length of the term of the Franchise extended to the Company, not to exceed ten (10) years, unless mutually terminated by the parties hereto, or otherwise concluded in accordance with the provisions hereof or Applicable Law.

IN WITNESS WHEREOF, the foregoing Agreement is dated this 4th day of December, 2012.

Attest:

COUNTY OF SARPY


County Clerk

 12/4/12
Chairman

Attest:

Qwest Broadband Services, Inc.



RVP, Regulatory & Legislative
Affairs


Executive Vice President



CenturyLink
200 S. 5th Street, 21st Floor
Minneapolis, Minnesota 55402
Phone 612-663-6913
e-mail mary.lafave@centurylink.com

Mary Ferguson LaFave
Director Public Policy

VIA OVERNIGHT DELIVERY

March 7, 2013

Kendra S. Koehler, Administrative Assistant
Sarpy County Clerk
1210 Golden Gate Drive
Papillion, NE 68046

Re: Cable Franchise Agreement between Sarpy County, Nebraska, and
Qwest Broadband Services, Inc., d/b/a CenturyLink

Dear Ms. Koehler:

Enclosed is the original signed agreement referenced above.

Sincerely,


Mary F. LaFave

Enclosure