

**Ordinance #89**  
Cable Franchise

**THIS ORDINANCE** made and entered into this 1st day of June 2010, by and between the City of Vernon Center, Minnesota, hereinafter referred to as the "FRANCHISOR," and Crystal Communications, Inc. DBA Hickory Tech of Mankato, Minnesota, hereinafter referred to as "FRANCHISEE."

**WHEREAS**, Franchisor deems it beneficial to enter into a franchise ordinance providing a cable communications system within the City of Vernon Center, Minnesota, and

**WHEREAS**, Franchisee is in the business of and qualified to provide such cable communication system.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Franchisor grants to Franchisee a franchise to operate a cable communication system in the city of Nicollet, as follows:

**SECTION 1 – GRANT OF AUTHORITY**

The City Council of Franchisor authorizes that a cable communications franchise for the installation, operation and maintenance of a cable communications system within the city is granted to Franchisee, subject to the terms and conditions set forth in this agreement. This franchise is granted for the corporate boundaries of the city, as it exists from time to time. In the event of annexation by the city, or as development occurs, any new territory shall become part of the territory for which this franchise is granted; provided, however, that Franchisee shall not be required to extend service beyond its present system boundaries unless there is a unless there is a minimum of thirty (30) homes per cable mile as measured from the last fiber node or terminating amplifier. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas.

**SECTION 2 – COMPLIANCE WITH STATE AND FEDERAL LAWS**

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

If any term, condition or provision of this franchise shall, to any extent, be held to be invalid or unenforceable, the remainder and all the terms, conditions and provisions herein shall, in all other respects, continue to be effective provided the loss of the invalid or unenforceable clause does not substantially alter the agreement.

**SECTION 3 – RULES OF FRANCHISE**

Franchisee 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 Franchisee to exercise its rights and perform its obligations under this franchise and to ensure uninterrupted

service to each and all of its subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, laws of the State of Minnesota, City of Nicollet, or any other body having lawful jurisdiction.

#### **SECTION 4 – FRANCHISE TERM**

This franchise shall have a term of fifteen (15) years. Future renewal is to be contingent upon a determination by the Franchisor that the performance of the Franchisee during the first term has fully and adequately met the communication needs of the community. Renewal, if granted, is to be on the terms and conditions that are mutually agreeable to both parties at the time of renewal.

#### **SECTION 5 – RENEGOTIATION OF FRANCHISE TERMS**

Renegotiation between the Franchisor and Franchisee shall occur not less than one year before the end of the franchise term, unless Franchisor determines not to reissue the franchise to the Franchisee or desires to consider additional applicants for the franchise.

#### **SECTION 6 – FRANCHISE EXCLUSIVITY**

This franchise agreement is non-exclusive.

#### **SECTION 7 – SALE OR TRANSFER OF THE FRANCHISE; SALE OR TRANSFER OF STOCK**

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

#### **SECTION 8 – RATES; RATE CHANGE PROCEDURE**

Franchisor may regulate rates for the provision of the broadcast tier of service provided over the system to the extent allowed under federal or state law and upon notice to Franchisee. A copy of Franchisee's current rates and charges for service and standard length and terms of subscriber contracts shall be maintained on file with Franchisor and shall be available for public inspection. Franchisee shall give Franchisor and subscribers written notice of any change in a rate or charge no less than thirty (30) days prior to the effective date of the change.

Franchisee 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 Franchisor on the transaction between the operator and the subscriber.

#### **SECTION 9 – FRANCHISE ADMINISTRATOR**

The City Council of the Franchisor, or its appointed designee, shall be responsible for the continuing administration of this franchise.

#### **SECTION 10 – LIABILITY INSURANCE PROGRAM**

Franchisor, its officers, board, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any person or for any injury or death of any person, arising out of or in connection with Franchisee's construction, operation, maintenance, repair, removal or other action with respect to this franchise. Franchisee shall indemnify and hold harmless Franchisor, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability,



damages and penalties which they may legally be required to pay as a result of Franchisor's exercise, administration and enforcement of this franchise, except because of Franchisor's own programming.

The Franchisee shall maintain throughout the term of the franchise, liability insurance in the following amounts: limits of liability for bodily injury and personal injury damage to be in the minimum amount of \$100,000.00 per person, and \$300,000.00 per occurrence. Minimum limits of liability for property damage to be in the amount of \$100,000.00 per occurrence, insuring both the Franchisor 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. Franchisee shall cause the Franchisor to be added as an additional named insured on Franchisee's policy of insurance, and shall cause a certificate of insurance evidencing the fact that said insurance is being maintained in force on a continuous basis during the term of this franchise ordinance to be filed with the City Clerk of Franchisor.

#### **SECTION 11 – PERFORMANCE BOND**

At this time, Franchisee is not required to provide a performance bond. However, a performance bond, letter of credit, or other security may be required by Franchisor as a result of a periodic evaluation session or during termination proceedings as provided herein.

#### **SECTION 12 – PUBLIC HEARING RE: FRANCHISEE CREDENTIALS**

The Franchisee's technical ability, financial condition and legal qualifications were considered and approved by the Franchisor in a full public proceeding that afforded reasonable notice and a reasonable opportunity to be heard.

#### **SECTION 13 – CHANNEL CAPACITY**

The Franchisee shall maintain a system with a minimum channel capacity of 60 channels. All programming decisions remain the sole discretion of Grantee.

#### **SECTION 14 – CONSTRUCTION SCHEDULE**

Within 90 days of the granting of this franchise, the Franchisee shall apply for all necessary governmental permits, licenses, certificates and authorizations. The energized cable shall be extended substantially throughout the authorized area within one year after receipt of all necessary governmental permits, licenses, certificates and authorizations; and persons along the route of the energized cable will have individual "drops" as desired during the same period of time. The time requirements of this subparagraph may be waived by the Franchisor only upon occurrence of unforeseen events or acts of God.

#### **SECTION 15 – MAINTENANCE OF RIGHTS-OF-WAY**

Construction standards and procedures shall be maintained and performed in strict compliance with the rules, regulations and requirements of the Franchisor. Franchisee shall comply with all ordinances and regulations of general applicability of the Franchisor now in force or hereafter adopted relative to the use of any municipal property or right-of-way. Nothing in this franchise shall be construed to prevent the Franchisor from adopting and enforcing a right-of-way ordinance. The Franchisee shall obtain a permit from the proper municipal authority before commencing construction, including the opening or disturbance of any street, sidewalk, driveway or public place, and shall restore any such street, sidewalk, driveway, or public place to its original condition. Easements, if any, from property owners shall be secured by Franchisee at its sole discretion.



#### **SECTION 16 – COMPLIANCE WITH APPLICABLE CODES**

The placement of cables underground is encouraged. All wires, conduits, cable and other property and facilities of the Franchisee shall be located, constructed, installed and maintained in compliance with applicable codes. The Franchisee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

#### **SECTION 17 – MUNICIPAL USE OF RIGHT-OF-WAY**

Nothing in this franchise shall be construed to prevent Franchisor from constructing, maintaining, repairing or relocating sewer mains; grading, paving, repairing, relocating and/or altering any right-of-way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating or repairing any sidewalk or other public work.

If at any time during the period of this franchise, Franchisor shall elect to alter or change the grade or location of any right-of-way, the Franchisee shall, at its own expense, upon reasonable notice by Franchisor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the cable system, and in each instance comply with the reasonable and lawful standards and specifications of the Franchisor.

#### **SECTION 18 – LIABILITY FOR INJURY OF FRANCHISEE'S FACILITIES**

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

#### **SECTION 19 – TECHNICAL STANDARDS**

The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable communications Systems pursuant to the Federal Communications Commission's rules and regulations and found in Code of Federal Regulations, Title 47, Sections 76.601 to 76.617, which regulations are expressly incorporated herein by reference. In the event that special testing is required to determine the source of technical difficulties, the cost of special testing shall be borne entirely by the Franchisee.

#### **SECTION 20 – SUBSCRIBER PRIVACY**

No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which shall be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV



Channel activity planned for the purpose of monitoring individual viewing patterns or practices. No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, or any other means, including but not limited to lists of the names and addresses of such Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available.

Written permission from the Subscriber shall not be required for the conducting of System-wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in this section.

#### **SECTION 21 – SUBSCRIBER COMPLAINTS**

All complaints by the Franchisor, subscribers or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the cable communications system shall be promptly investigated and resolved by the Franchisee.

#### **SECTION 22 – REPAIRS AND COMPLAINTS**

Franchisee shall provide a toll-free telephone number for reception of subscriber complaints and shall maintain a repair service capable of responding to subscriber complaints or requests for service within twenty-four (24) hours after receipt of the complaint or request. Costs included in making repairs, adjustments and installations shall be borne by Franchisee, unless otherwise provided for in the schedule of rates included in Section 8 above.

#### **SECTION 23 – NONENFORCEMENT BY FRANCHISOR**

Franchisee shall not be relieved of its obligations to comply with any of the provisions of this franchise by reason of any failure or delay of Franchisor to enforce prompt compliance. Franchisor may only waive its rights hereunder by expressly so stating in writing. Any such written waiver shall not operate or be construed to be a waiver of any subsequent breach or violation.

#### **SECTION 24 – FORCE MAJEURE**

Franchisee shall not be held in default or non-compliance with the provisions of this franchise, nor suffer any enforcement or penalty relating thereto, when Franchisee's performance hereunder is unreasonably prevented or impaired due to acts of God, power outages, or other events reasonably beyond its ability to control.

#### **SECTION 25 – TERMINATION**

The Franchisor shall have the right to terminate and cancel the franchise and all rights and privileges of the franchise in the event that the Franchisee substantially violates any provision of this franchise ordinance, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the Franchisor. The Franchisor shall provide the Franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the Franchisee a minimum of ninety (90) days subsequent to receipt of the notice in which to correct the violation. The Franchisee shall be provided with an opportunity to be heard at a public hearing. IN the event that the Franchisor determines to terminate the franchise, the Franchisee may exercise its rights of appeal under state and federal law. During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires.



**SECTION 26 – ABANDONMENT**

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

**SECTION 27 – REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FOREITURE**

In the event of termination, abandonment, or forfeiture of the franchise, the Franchisee shall have the right to require Grantee to remove all or any portion of the System from all streets and public property within the City; provided, however, that if Grantee is authorized to provide telecommunications services on the System pursuant to state or federal law, the Franchisor may not order the removal of any portion of the System used to provide such telecommunications services.

**SECTION 28 – MUNICIPAL RIGHT TO PURCHASE SYSTEM**

In the event of any proposed sale, transfer or assignment under Section 6, Franchisor shall have the right of first refusal of any bona fide offer to purchase the cable system. Franchisor shall be deemed to have waived its rights under this section if it does not indicate to Grantee in writing, within thirty (30) days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or if it approves the assignment or sale of the Franchise as provided in section 7.

**SECTION 29 – DROPS TO PUBLIC BUILDINGS**

Grantee shall provide Installation of one (1) cable Drop, one (1) cable outlet, and monthly Basic Service, including The Weather Channel, without charge to the Franchisor with preference shown to the public school or fire hall. No redistribution of the free Basic Cable Service and The Weather Channel provided pursuant to this section shall be allowed. Additional Drops and/or outlets in any of the above locations will be provided at the cost of Franchisee's time and material.

**SECTION 30 – PERIODIC EVALUATION**

Franchisor may require evaluation sessions during the term of this franchise not more than annually, upon thirty (30) days written notice to Franchisee. Franchisee and Franchisor shall hold an evaluation session after the fifth year of this franchise. All evaluations shall be open to the public. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, system performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this franchise, judicial rulings, FCC rulings, line extension policies and any other topics the Franchisor and Franchisee deem relevant.

As a result of a periodic review or evaluation session, Franchisor may request to amend the franchise to provide additional services or facilities as mutually agreed upon and which are both economically and technically feasible taking into consideration the remaining life of the franchise.

**SECTION 31 – WRITTEN NOTICE**

All notices, reports or demands required to be given in writing under this franchise shall be deemed to be given when delivered personally or forty-eight (48) hours after it is deposited in

the United States mail, addressed to whom the notice is being given. Such addresses may be changed by either party upon due notice to the other, as follows:

If to the Franchisor: City of Vernon Center  
101 Oak Street North  
Vernon Center, MN 56090

If to the Franchisee: HickoryTech  
Attn: Regulatory Department  
221 E. Hickory Street  
Mankato, MN 56001

In cases of emergency or other times requiring prompt action, voicemail, fax, e-mail or other good faith effort to notify the other party shall be permissible.

**SECTION 32 – EFFECTIVE DATE**

This Ordinance shall take effect and be in force from and after its passage and publication. This franchise shall not be binding upon Franchisor until accepted by Franchisee within thirty (30) days hereof.

Adopted by the Vernon Center City Council this 1<sup>st</sup> day of June 2010.

Signed:

  
\_\_\_\_\_  
Robert Peterson, Mayor

  
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Patricia Krosch, City Clerk-Treas.

The foregoing Cable Communications Franchise is hereby accepted by Franchisee, which agrees to be bound by its terms and conditions.

CRYSTAL COMMUNICATIONS, INC DBA HICKORYTECH

  
\_\_\_\_\_  
Damon D. Dutz, President

  
\_\_\_\_\_  
Date