4003

LF032807-01 4-2-07

(Knology Inc aka Prairiewave

RESOLUTION CONSENTING TO TRANSFER OF CONTROL

The City of Rapid City, SD, having received and reviewed a request to transfer control of the Cable Television Franchise ("Franchise"), previously awarded to PrairieWave Telecommunications, Inc., ("PrairieWave"), from its existing ultimate parent, PrairieWave Holdings, Inc. to its new ultimate parent, Knology, Inc. pursuant to an Agreement and Plan of Merger, dated January 8, 2007 ("Request"); and

The City having reviewed the Request and the attachments, and having had a Hearing, discussion and vote on the transfer;

The City finds that the transfer is acceptable and thus GRANTS ITS CONSENT to the transfer; transferring the Franchise from PrairieWave Holdings, Inc. to Knology, Inc., transferring all rights, duties, and obligations of the Franchise, and continuing said Franchise in full force and effect for its term.

Date April 2, 2007

City of Rapid City

By: Jim Hare

Title: Mayor

ATTEST:

James Preston

The Mayor presented (No. LF032807-01), the Consent to Assignment of Cable TV Franchise from Prairie Wave to Knology, Inc. The following resolution was introduced, read, and Okrepkie moved its adoption:

RESOLUTION CONSENTING TO TRANSFER OF CONTROL

The City of Rapid City, SD, having received and reviewed a request to transfer control of the Cable Television Franchise ("Franchise"), previously awarded to PrairieWave Telecommunications, Inc., ("PrairieWave"), from its existing ultimate parent, PrairieWave Holdings, Inc. to its new ultimate parent, Knology, Inc. pursuant to an Agreement and Plan of Merger, dated January 8, 2007 ("Request"); and

The City having reviewed the Request and the attachments, and having had a Hearing, discussion and vote on the transfer;

The City finds that the transfer is acceptable and thus GRANTS ITS CONSENT to the transfer; transferring the Franchise from PrairieWave Holdings, Inc. to Knology, Inc., transferring all rights, duties, and obligations of the Franchise, and continuing said Franchise in full force and effect for its term.

Dated this 2nd day of April, 2007.

CITY OF RAPID CITY
s/ Jim Shaw, Mayor

ATTEST:
s/ James F. Preston
Finance Officer

(SEAL)

The motion for the adoption of the foregoing resolution was second by LaCroix. The following voted AYE: Schumacher, Olson, Kroeger, Chapman, Johnson, LaCroix, Okrepkie, Hurlbut, and Hadcock; NO: None; ABSTAINING: Kooiker; whereupon said resolution was declared duly passed and adopted.

Okrepkie moved, second by Johnson to (No. LF032807-19), approve an Event Permit for Step It Up Children's March to Stop Global Warming on Saturday, April 14, 2007. Substitute motion was made by Schumacher, second by Chapman and carried to acknowledge the applicant's request to withdraw the Event Permit.

Okrepkie moved, second by Olson and carried to (No. LF032807-10), affirm the current Golf Facilities Winter Play Policy.

PUBLIC WORKS COMMITTEE ITEMS

Olson moved, second by Kroeger to approve a request by Joe Hilt, President of J. H. Hilt Engineering, Inc. to the City of Rapid City to provide all compost at no charge for the South Dakota Department of Transportation I-90 Exit 61 construction project.

1003
5-16-05
(RW Fibercom)
Prairiewave

RESOLUTION OF THE CITY OF RAPID CITY
APPROVING THE TRANSFER OF CONTROL
OF
BLACK HILLS FIBERCOM, L.L.C.,
A CABLE FRANCHISEE OF THE CITY OF RAPID CITY,
FROM
BLACK HILLS CORPORATION
TO
PRAIRIEWAVE COMMUNICATIONS, INC.

WHEREAS, Black Hills FiberCom L.L.C. ("Franchisee") owns, operates, and maintains a cable television system ("System") in the City of Rapid City ("Franchising Authority") pursuant to Ordinance No. 3458 adopted January 18, 1999, (the "Franchise") and Franchisee is the current authorized holder of the Franchise; and

WHEREAS, Franchisee is a wholly-owned subsidiary of Black Hills Corporation; and

WHEREAS, Black Hills Corporation and PrairieWave Communications, Inc. ("Transferee") are parties to a Stock Purchase Agreement, pursuant to which the Franchisee will be transferred to Transferee ("Transaction"); and

WHEREAS, pursuant to the proposed Transaction, the ownership of the Franchisee and various affiliated entities (the "BH Fibercom Parties") which own and operate cable television systems will be sold to Transferee such that after the closing of the Transaction, Transferee will own 100% of the BH Fibercom Parties and operate the System; and

WHEREAS, Franchisee and Transferee have requested consent by the Franchise Authority to the Transaction in accordance with the requirements of the Franchise and have filed a complete FCC Form 394 with the Franchise Authority; and

WHEREAS, the Franchise Authority has investigated the qualifications of Transferee and finds it to be a suitable Transferee;

NOW THEREFORE , BE IT RESOLVED BY THE CITY OF RAPID CITY AS FOLLOWS:

Section 1. The Franchise Authority consents to the Transaction, and any intermediate assignment of the Franchise to an affiliate of Franchisee as necessary to effect the Transaction, in accordance with the terms of the Franchise.

Section 2. The Franchise Authority confirms that (a) the Franchise was properly granted or transferred to Franchisee, (b) the Franchise is currently in full force and effect subject to options in the Franchise, if any, to extend such term, (c) the Franchise supersedes all other agreements between the Franchise Authority and the Franchisee, (d) the Franchise represents the entire understanding of the Franchise Authority and the Franchisee and Franchisee has no obligations to the Franchise

Authority other than those specifically stated in the Franchise, and (e) Franchisee is materially in compliance with the provisions of the Franchise and to the knowledge of the Franchise Authority, no fact or circumstances exists which constitutes or which, with the passage of time or the giving of notice or both, would constitute a material default or breach under the Franchise or would allow the Franchise Authority to cancel or terminate the rights under the Franchise.

Section 3. PrairieWave Communications may transfer and assign the Franchise or control related thereto to any entity, directly or indirectly, owned or controlled by, controlling or under common control by Transferee, upon notice to the Franchising Authority of any such transfer, the Franchising Authority hereby consents to and approves the assignment, mortgage, pledge or other encumbrance, if any, of the Franchise, System, or assets relating thereto, or the interests in the permitted holder thereof, as collateral for a loan.

Section 4. The Franchise Authority hereby waives any right to first refusal which the Authority may have pursuant to the Franchise, or otherwise, to purchase the Franchise or the System serving the Authority with respect to the Transaction.

Section 5. This Resolution shall be deemed effective as of the date of its passage.

Section 6. This Resolution will have the force of a continuing agreement with Transferee, and Franchise Authority will not amend or otherwise alter this Resolution without the consent of Transferee.

Dated this 16 day of May, 2005.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

ORDINANCE NO. 3458

AN ORDINANCE GRANTING A FRANCHISE TO BLACK HILLS FIBERCOM, INC.

BE IT ORDAINED BY THE CITY OF RAPID CITY, SOUTH DAKOTA

The City of Rapid City, South Dakota (the "City") hereby grants to Black Hills Fibercom, Inc. (the "Grantee"), the rights under this Cable Television Franchise Ordinance.

I.
SHORT TITLE

This ordinance shall be known and may be cited as the Rapid City Cable Franchise Ordinance.

II.
DEFINITIONS

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in 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 always mandatory and not merely directory.

1. "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.

2. "Cable Act" means Title VI of the Communications Act of 1934, 47 U.S.C. 151 et seq., as amended.

3. "Cable 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.

4. "Cable Television System," "Cable System" or "CATV" means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the City, but such term does not include:

A. a facility that serves only to retransmit the television signals of one or more television broadcast stations;

B. a facility that serves subscribers without using any public right-of-way;

C. a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent that 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 services; or

D. an open video system that complies with Section 653 of Title VI of the Cable Act; or

E. any facilities of any electric utility used solely for operating its electric utility systems.

5. "Channel" as defined by Section 602(4) of the Cable Act means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Federal Communications Commission by regulation), or as may be hereafter amended from time to time by applicable federal rule, regulation or law.

6. "City" means the City of Rapid City, South Dakota.

7. "Council" means the Mayor and the Council of Rapid City, South Dakota.

8. "Drop" means the cable that connects the subscriber ground block or other point of demarcation to the nearest feeder cable of the system.

9. "FCC" means Federal Communications Commission, its designee, or any successor thereto.

10. "Franchise" means the initial authorization, or renewal thereof, issued by the franchising authority, whether such authorization is designated as a franchise, permit, license resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering cable service or other service to Subscribers.

11. "Franchise Fee" means any tax, fee, or assessment of any kind imposed by the City on the Grantee or Grantee's subscriber, or both, solely because of their status as a cable operator, cable subscriber, or cable user.

12. "Grantee" means Black Hills Fibercom, Inc., its assignee, transferee or its successor in accordance with the provisions of this Franchise.

13. "Gross Revenues" means revenue received by the Grantee from subscribers within the Service Area in payment for basic cable services, expanded basic cable services and premium pay television services.

14. "Person" means any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.

15. "Premium Pay Services" means a category of video programming provided by a cable operator for which a separate monthly rate is charged on a per-channel basis by the cable operator, but does not include Pay-Per-View programming.

16. "Public Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right of way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the City in the Service Area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing or transmitting the Grantee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

17. "Service Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

18. "Subscribers" means any member of the general public who lawfully receives cable services distributed by Grantee and does not further distribute it.

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

20. "Other Programming Service" means information and services that a cable operator makes available to all Subscribers generally.

III.
QUALIFICATIONS OF GRANTEE AND GRANT OF NON-EXCLUSIVE AUTHORITY

1. The City hereby grants to the Grantee a nonexclusive franchise, right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, above, over and under all Public Ways, all future extensions thereof and additions thereto in the City, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a Cable System for the purpose of distributing Cable Services to the public, provided that all generally required permits are applied for and granted, all lawful fees paid, and all other generally applicable City codes and ordinances are otherwise

complied with. The right so granted includes the right to use and occupy said Public Ways and public places and all matter or easements for the purposes herein set forth.

2. The City specifically reserves the right to grant, at any time, an additional franchise or franchises for a cable system in accordance with City, state and federal law.

IV.
DURATION AND ACCEPTANCE OF FRANCHISE

1. Duration. This franchise shall commence on the effective date of this Ordinance which shall be the twentieth (20th) day after the final publication of this Ordinance and shall be perpetual in duration unless lawfully revoked or lawfully terminated sooner as provided herein.

2. Acceptance of Franchise. The City, having had sufficient opportunity to investigate fully and consider the qualifications of Grantee to provide cable television service within the Service Area, and the Grantee, having appraised itself of the conditions and limitations under which it is expected to provide such cable television service and subject to the terms, conditions and limitations expressed herein, by signature hereon, the parties accept and agree to be bound by the restrictions, terms and conditions of this Agreement.

3. Modification. Although the duration of the franchise is perpetual, changes may be made to any portion of the Franchise as may, from time to time, be agreed upon in writing as necessary by and between Grantor and Grantee. Changes may include, but are not limited to, franchise fees, gross revenues, and other changes to accommodate technological advances. Each party is obligated to negotiate in good faith any request or proposed changes by the other party.

V.
FORCE MAJEURE

1. Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged default occurred or was caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond Grantee's ability to anticipate and control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which Grantee's cable and/or equipment is attached, as well as uncharacteristic lack of or unavailability of materials and/or qualified labor to perform the work necessary.

2. The parties hereby agree that it is not the City's intention to subject Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the local cable ordinance, which shall include but are not limited to, the following:

A. in instances or for matters where a violation or a breach by Grantee of the local cable ordinance was a good faith error that resulted in no or minimal negative impact on the customers within the service area; or

B. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by Grantee of the local cable ordinance, or which were deemed to have prevented Grantee from complying with a term or condition of the local cable ordinance.

VI.
COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, ORDINANCES AND CODES

1. Except in those areas which have been preempted by the Cable Act, or any other applicable federal or state law, the Grantee shall be subject to the lawful police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

2. All facilities and equipment of the Grantee shall be constructed and maintained in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and other applicable national, state or city electrical or construction codes which may be in effect.

VII.
LIABILITY AND INDEMNIFICATION

1. Grantee shall maintain the following types of insurance with a company authorized to do business in the State of South Dakota with a rating by A.M. Best Company of not less than "A".

A. Workers' compensation upon its employees in compliance with statutory limits of the worker's compensation laws of the State of South Dakota.

B. Commercial General Liability (CGL) insurance providing coverage for operations of Grantee in the amount of $1,000,000 combined single limit for bodily injury and property damage, or as may be required by the laws of the state. The City shall be provided with a copy of a certificate evidencing such coverage within thirty (30) days after the effective date of this Ordinance. Insurance coverage will be reviewed from time to time as may be required by amendments or changes in appropriate statutes and the City shall be provided with a copy of a certificate evidencing such change.

C. Automobile liability insurance coverage on all owned, non-owned, and hired automobiles, trucks, and trailers in accordance with state laws and/or good business practice.

D. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the City.

2. To the extent permitted by law, Grantee agrees to indemnify, defend and hold harmless the City, its officers, boards and employees, from and against any liability for losses and physical damage to property and bodily injury or death to persons which may be caused by the Grantee's negligent or wrongful construction, operation, maintenance, use of its Cable. Notwithstanding the foregoing, this subsection shall not apply to any liability which may accrue to the City with regard to the City's use of any channel provided for the City's use or arising out of the use of the emergency override capability required pursuant to this Agreement.

3. The City and Grantee acknowledge that certain provisions of the Cable Act may limit the liability of the City to third parties in connection with the grant of this Franchise. In particular, any relief granted is limited to injunctive and declaratory relief in any court proceeding brought by a third party involving any claim arising from the regulation of cable service or from a decision to grant, renew, transfer or amend the Franchise, to the extent that relief is required by any other provision of federal, state or local law. Notwithstanding this provision, Grantee agrees that in addition to its duty to indemnify the City under Subsection 2 above, Grantee shall indemnify and hold harmless the City against all damages, losses and expenses (including reasonable attorney's fees and costs of suit or defense) arising from third-party suits which either: (a) challenge the authority of the City to issue the franchise; or (b) allege that in issuing the franchise, the City acted in a disparate or discriminatory manner.

4. The City shall give Grantee prompt written notice of any claim, demand, action or proceeding for which indemnification will be sought under this provision of the Agreement, and if such claim, action, demand, or proceeding is brought by a third party, Grantee shall have the right, at its expense, to assume the defense of such claim, demand, action or proceeding using counsel chosen by Grantee in its sole and only discretion. The City shall have the right to participate, at its own expense, with respect to any such third-party claim, demand, action or proceeding that Grantee so defends. In connection with any such third-party claim, demand, action or proceeding, Grantee and City shall cooperate with each other and provide each other with access to relevant books and records in their possession.

5. In connection with any claim, action, demand or proceeding which may be brought relative to this franchise, if, in the considered opinion of the City, the interests of the City cannot reasonably be represented or defended in good faith by the Grantee, its insurance carrier or counsel, the City shall have the right to retain, at its sole expense, whatever representation or counsel it deems sufficient for adequate defense of its interests.

VIII.
STANDARDS OF SERVICE

1. Operation and Maintenance of System.

A. The Grantee shall render safe and efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions shall be, insofar as possible, preceded by notice and occur during periods of minimum use of the system.

B. The Grantee shall maintain a sufficient number of employees to provide safe, adequate, and prompt service for its facilities.

C. All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the ordinary use of Public Ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners whose property adjoins any Public Ways.

D. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located, erected and maintained so as not to endanger or unreasonably interfere with the lives of persons, any installations of the City or of a public utility serving the City, or with any new improvements the City may deem proper to make.

E. In the maintenance and operation of their transmission and distribution system in the Public Way, and in the course of any new construction or addition to their facilities, Grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by Grantee in the course of their operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

F. No excavations of any type shall be done or caused to be done unless permission in writing is first obtained from the City Engineer's office, except in the event of an emergency. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving the Grantee's cable and other equipment without technical degradation of the System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall have the sole discretion to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section, in the event that all of the transmission or distribution facilities of the respective public

utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, the Grantee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

G. All work in any way necessitated by the business of Grantee which may involve the opening, breaking up or tearing up of a portion of a Public Way or other part of any City-owned or City-controlled property shall be done by the Grantee at the expense of Grantee, but under the direction of the City. City shall have the option to use its own employees to perform the work at the expense of Grantee, which expense shall be no greater than if Grantee used its own methods and employees. If the City does not exercise its option, in case of disturbance of any Public Way, the Grantee shall, at its own cost and expense and in manner approved by the City Engineer, which approval shall not be unreasonably withheld, replace and restore such Public Way in as good a condition as before the work involving such disturbance was done or much like its previous condition as may be reasonable and practicable in the circumstances.

H. In the event of an emergency, Grantee shall use its best judgment and due care to effectuate whatever repairs may be necessary while minimizing any damage to any Public Way or private property and Grantee shall promptly inform appropriate City personnel of the action taken.

I. If at any time during the period of this Franchise the City shall lawfully decide to change the grade or otherwise alter any Public Way, the Grantee, upon at least 30 days notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense, provided similar such action is a requirement generally imposed upon other providers of public utilities.

J. All installations of equipment shall be of permanent nature, durable, and installed in accordance with good engineering practices, and of sufficient height to comply with all existing generally applicable City regulations, ordinances, and state laws so as not to interfere in any unreasonable manner with the usual rights of the public or individual property owner, and any equipment installed in a Public Way or place shall not unreasonably interfere with the usual travel on such Public Way or use of such public place and during the construction, repair, and removal thereof, shall not unreasonably obstruct or impede traffic.

K. The Grantee shall, on the request of any person holding a valid building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising and lowering of wires shall be paid by the person requesting it, and the Grantee may require such payment in advance. The Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary wire changes.

L. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the City for any damages caused by such trimming, or shall, in its sole discretion and

at its own expense and cost, reasonably replace trees or shrubs damaged as a result of any construction of the System undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the City pursuant to the terms of this section.

M. The Grantee shall use its best efforts to prevent its cable or other operations from unreasonable interference with television and radio reception of persons not served by the Grantee.

N. Upon advance written notice of not less than thirty (30) days, Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same Public Way or public place, or remove from the Public Way or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity; provided, however, that Grantee may abandon any property of Grantee in place as hereinafter provided.

O. Any property of Grantee to be abandoned in place shall be abandoned in such a reasonable manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

2. Continuity of Service.

A. All subscribers shall have the right to continue to receive service, insofar as their financial and other obligations to Grantee are honored.

B. Service shall be provided in compliance with all consumer protection and customer service regulations in accordance with Section 632 of the Cable Act, as amended from time to time.

C. The Grantee and the City agree that in the event of a final determination of a lawful revocation of the Franchise, the Grantee, upon request, shall have a reasonable opportunity to effectuate a transfer to the Cable System to a qualified third party reasonably acceptable to the City. The City further agrees that during such period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior franchise; for a period of time no greater than six (6) months from the effective date of such revocation, unless a longer time shall be agreed to between the parties and in writing. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the Grantee's continued operation of its Cable System during the six-month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or the Grantee.

D. Nothing in this Ordinance shall be construed to be a waiver by Grantee of any of its constitutional or statutory rights under federal or state law.

3. Subscriber Privacy. The Grantee shall comply with Section 631 of the Cable Act.

4. System Use in Emergency.

A. In accordance with the provisions of FCC Regulations Part 11, subpart D, Section 11.51(h)(1), and at such time required by said regulation and as such regulations may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Reg. Section 11.51.

B. The City shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall indemnify, save and hold harmless the Grantee, its employees, officers and assigns from any claims including, but not limited to, reasonable attorney's fees, arising from use of the Cable System or the EAS equipment by the City, its employees, authorized representatives, or designees. Additionally, the City shall agree to instruct authorized persons to use due care and shall take reasonable precautions to prevent use in any manner which results in damage, loss or inappropriate use of the EAS equipment or other Cable System equipment which may be used during a declared emergency.

IX.
EXTENSION OF FACILITIES

Services provided by the Grantee under this franchise shall be made available to all points within the Service Area during the term of this franchise under the following conditions:

1. Whenever the Grantee shall receive a request for service from at least 15 residences within 1320 cable-bearing strand feet (one-quarter mile) of its trunk or distribution cable, it shall extend the Cable System to such Subscribers at no cost to said Subscribers for the extension, other than the usual connection fees for all Subscribers, provided that such Cable System extension is technically feasible and provided such an extension will not adversely affect the operation, financial condition, or market development of the Cable System or as provided for under subsection B, below.

2. No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as subscriber's request to locate his cable drop underground in an area where other installation is done in an aerial manner or a distance of greater than 150 feet from the distribution cable to the connection of service to Subscriber, or a density of less than 15 residences per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of materials,

labor, and access to easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in an area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals 15 residences. Subscribers who request service hereunder will bear the remainder of the construction and other cost on a *pro rata* basis. The Grantee may require that the payment of the capital contribution in aid of construction to be borne by such potential Subscribers be paid in advance.

X.
REMOVAL OF FACILITIES

1. Upon termination of service to any Subscriber, the Grantee shall schedule an appointment with Subscriber to pick up cable boxes and other equipment from the premises of such Subscriber upon written request of the owner.

2. Notwithstanding the foregoing, nothing in this subsection shall require that Grantee pay damages or other costs of a Subscriber or homeowner when that subscriber or homeowner requested that Grantee remove, replace or relocate cable and Grantee exercised due care in the performance of that services or when the Subscriber or homeowner provided false information to Grantee on which Grantee relied.

3. Upon lawful revocation or termination of this Franchise, the City may request the removal of the Grantee's equipment and facilities. Such removal shall be at the expense of the Grantee and shall be accomplished within a reasonable period of time based on the availability of appropriate materials, equipment, qualified labor and other such factors. Any disturbance to City property during such removal process shall be restored to its original condition existing prior to removal so far as is reasonable and practicable. The City reserves the right to inspect and approve the condition of its property after such removal. Grantee shall also have the right to abandon in place any or all equipment and facilities, in accordance with reasonable procedures established by the City for such abandonment.

XI.
TRANSFER OR SALE OF FRANCHISE

1. In compliance with the provisions of the Cable Act, the Franchise and rights granted under this Ordinance may not be sold, assigned, or transferred by the Grantee other than to an entity controlling, controlled by or under common control with the Grantee without the written consent of the City, which shall not be unreasonable withheld.

2. The Grantee shall provide written notice to the City of any proposed sale, assignment, or transfer. The City shall have a period not to exceed 120 days from receipt of such notice of intent to sell, transfer or assign the Franchise, in which to approve or deny the sale, assignment or transfer. Within thirty (30) days of receiving the request for transfer, sale or assignment, City

shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the potential transferee, buyer or assignee. Any periods of public notice and/or any public hearings to be conducted, must occur within the 120 day period. If the City fails to render a final decision within the 120 day period, the request shall be deemed granted unless the City and Grantee or requesting party shall have agreed upon an extension of time in writing.

3. The City reserves the right of first refusal of any bona fide offer from a third party to purchase the system under substantially the same terms and conditions as the offer received. City must indicate its intent to exercise the right of first refusal within ten (10) days after receipt of notification that a third-party offer to purchase is under consideration by Grantee. If City elects to proceed with the transaction under its first right of refusal, it shall promptly notify Grantee and said purchase by the City shall be closed and consummated from readily available funds within ninety (90) days of notification to Grantee of City's intent to purchase. Notwithstanding the foregoing, there shall be no right of first refusal available to the City in the event of a transfer, sale or assignment to an affiliated company within the meaning of the Cable Act.

4. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the City either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer or ownership of the Cable System to another party, any such acquisition or transfer shall be on the terms set forth in 47 U.S.C. Section 547.

XII.
FRANCHISE FEES

1. During the term of this Franchise and so long as Grantee or its successors or assigns operate the Cable System, commencing from the effective date of this Ordinance, Grantee shall pay to the City annually the sum of five percent (5%) of the annual revenue received from the operation of the Cable System from providing basic cable services and expanded basic cable services to subscribers and two and one-half percent (2.5%) of the annual revenue received from premium pay television services (as defined herein) as compensation for the franchise. Grantee shall make good faith estimates of its quarterly revenues and shall remit each quarter, no later than 45 days from the last day of the quarter, to the City. A brief report shall accompany the payment showing the basis for the computation of the amount paid.

2. Such payments by Grantee to City shall be in lieu of any occupation tax, license tax, or similar levy. Nothing herein contained, however, shall in any way relieve Grantee or its assigns or successors form the obligation of paying property taxes to the City of Rapid City or any other governmental subdivision of the State of South Dakota or any other taxes lawfully levied by the State of South Dakota on the operation of the Grantee. Such payment also does not affect the responsibility of Grantee to collect state and local sales tax on the service provided.

3. Grantee shall file with the City, within ninety (90) days after the expiration of any fiscal year of Grantee during the term of this Franchise, a statement of Gross Revenues received, as

defined herein, certified by either the chief financial officer of Grantee or the general manager of Grantee. Such statement shall include a computation of the total amount due to the City for the fiscal year, a summary of the quarterly payments already made by Grantee and the balance, if any, owed to the City for the fiscal year covered by such statement. Any credit due Grantee from the City shall be used to reduce Grantee's next quarterly estimated payment or payments to the City. The City may, at its request, audit or inspect the books and records of Grantee related to Gross Revenue going back five years from the date of the request. The cost of such audit or inspection shall be paid by City, unless by such audit or inspection, City determines that the Grantee has underreported by more than five percent (5%) its Gross Revenue for any one year, in which case, Grantee shall pay the cost of the audit, including reasonable accountants fees.

4. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by the City. Notwithstanding any such recomputation or audit, Grantee shall not be liable for payment of any underpaid fees beyond any which may be owed for the fiscal year immediately past.

XIII.
ERECTION, REMOVAL AND COMMON USE OF POLES

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City Engineer with regard to locations, height type or any other pertinent aspect. However, no locations of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City reasonably determines that the public convenience would be enhanced thereby. Notwithstanding the foregoing, City hereby warrants it will hold Grantee to a standard regarding any such removal or modification that is no greater than that to which other local utility providers are held or that standard which is generally applicable.

2. There is hereby granted, to the extent that the City is authorized to so do, the right and authority to Grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from the City, any and all holders of public licenses and franchises within the corporate limits of the City of Rapid City, including the U.S. West Communications, Inc. (and any affiliates thereto) and Black Hills Power and Light, to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the City. It is the stated intention of the City that all other holders of public licenses and franchises within the corporate limits of the City shall cooperate with Grantee to allow Grantee's joint usage of their poles and pole line facilities whenever possible or wherever such usage does not interfere with the normal operation of said poles and pole-lines so that a number of new or additional poles constructed by Grantee within the City may be minimized.

3. Subject to any applicable state or federal regulations or tariffs, Grantee hereby grants to the City, for a reasonable expense no greater than that charged to or by other utility providers for

similar purpose, joint use of any and all poles owned by them for any proper municipal purpose acceptable to Grantee, provided that: (a) such use by the City does not interfere with the current or future use by the Grantee; (b) the City shall hold Grantee harmless against and from any and all actions, causes of action, demands, costs, liabilities, claims or damages of any nature whatsoever arising out of placing of the City's wires or appurtenances upon the poles of Grantee, including but not limited to, reasonable attorneys' fees and costs; and (c) the City shall take reasonable precautions to prevent use in any manner which results in inappropriate use of poles or conduits or any loss or damage to the Cable System. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the City's joint use of their poles, Grantee is required to change or replace poles or install new poles, the City shall fully compensate Grantee for such additional expense, including but not limited to the cost of removal of pole being replaced, design services, equipment rental, materials and labor.

4. Where a public utility serving the City desires to make use of poles or other wireholding structures of the Grantee but agreements therefor with the Grantee cannot be reached, to the extent the State of South Dakota does not regulate the rates, terms, and conditions of pole attachments pursuant to federal law, the City shall follow the FCC's rate-setting formula and pole attachment regulations and decisions to resolve any dispute concerning the use of Grantee's poles or underground conduit by a public utility. Notwithstanding the foregoing, nothing in this ordinance shall be construed to be a waiver by Grantee of its constitutional or statutory rights under federal or state law.

XIV.
RATES

1. Grantee shall at all times maintain on file with the City Finance Director a schedule setting forth all rates and changes to be made to Subscribers for Basic Cable Service, including installation charges. See Attachment A for a copy of the current rate schedule.

2. Grantee shall not discriminate in its rates between customers of the same category except to the extent permitted by federal law; however, nothing contained herein shall be construed to limit the Grantee's ability to maintain separate schedules of rates for separate classes of subscribers or to offer promotional rates from time to time.

3. Grantee's rates for Basic Cable Service may be regulated by the City only as expressly permitted by applicable law.

XV.
PERFORMANCE EVALUATION

1. Within sixty (60) days after the fifth, tenth and fifteenth anniversaries of the effective date of this Ordinance, the governing body of the City, as part of a regularly scheduled meeting and upon notice to the public, may hold a public hearing to evaluate the performance of the Grantee.

Topics may include, but are not limited to applications of new technology, system performance, services provided, complaints, privacy issues, and franchise modification.

2. Grantee shall fully cooperate with the City regarding this evaluation. Grantee will, at its expense, provide such information, data, and documents as the City may reasonably request in connection with the evaluation.

3. If, at such public hearing, the City reasonably determines that evidence exists of inadequate cable system performance, it may require Grantee to perform tests and analyses as necessary, directed toward the identified or suspected inadequacies. Prior to performing such tests and/or analyses for the first time, the City and Grantee shall together establish a standard of reasonable compliance by which to measure the Grantee's performance. Based upon that standard of reasonable performance, if said tests and analyses determine that there is substantial failure to comply with the material requirements of the franchise, then the costs and expenses for performing such tests and analyses shall be borne by Grantee. However, if such tests and analyses demonstrate substantial compliance with the material provisions of the performance standards, the costs of such tests and analyses shall be paid by the City. The Grantee shall fully cooperate with the City in the performance of any tests. Results of the tests may include, but are not limited to the following:

A. Identification and qualifications of the person performing the tests.

B. The nature of the identified or suspected inadequacy which precipitated the test.

C. What system components were tested.

D. The equipment used and procedures employed in testing.

E. The results, analyses and interpretation of the results of the tests.

F. The method, if any, by which any identified system inadequacy has been, or will be rectified.

G. Recommendations, if any, for additional action.

H. An other information pertinent to the tests and analyses which may be required or is useful.

4. Upon demand by the Rapid City Council the Grantee agrees to correct any inadequacies substantiated by the testing. Failure to correct such inadequacies as ordered through a majority vote of the Rapid City Council shall be deemed a material breach of this Franchise. Under the sole discretion of the City Council this Franchise may be terminated in accordance with the termination procedures set forth in this Ordinance. Nothing in this section shall require the Grantee to maintain the system to specifications greater than those required by the technical standards of the Cable Act.

XVI.
COMPLAINT PROCEDURES

1. The Grantee shall maintain a local, toll-free or collect telephone access number which Subscribers may telephone during regular business hours to report complaints. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee and Grantee shall make every reasonable attempt to resolve the complaint.

2. As notice of the complaint procedure described in subsection 1, the following informationwill be distributed in printed from to all new Subscribers at the time of installation:

> "Pursuant to applicable provisions of the FCC rules and regulations, state and federal law, all subscribers are hereby notified that Service Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to TCI Cablevision of South Dakota for resolution."

3. Notwithstanding the foregoing, Grantee shall comply with all applicable rules of the FCC with regard to customer complaint procedures and customer service standards, including any required modifications of the complaint procedures or notice to subscribers as may from time to time be needed to conform such notice and procedures to the FCC rules.

XVII.
SEVERABILITY

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

XVIII.
NOTICE REQUIREMENTS

All notices, reports, or demands required by this Ordinance shall be given in writing, unless expressly otherwise agreed to between the parties. Notice shall be deemed to have been duly given to the required party five business days after having been mailed in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, OR twenty-four (24) hours after having been delivered by a courier service and the receipt signed, OR twenty-four (24) hours after having been hand delivered to the City Attorney's Office or other designee.

Notices or responses to the City shall be addressed as follows:

City Finance Officer
City of Rapid City
300 6th Street
Rapid City, SD 57701

Notices to the Grantee shall be addressed as follows:

General Manager
Black Hills Fibercom, Inc.
2045 Samco Road
Rapid City, SD 57702

XIX.
COSTS TO CITY

The Grantee shall assume the cost of publication of this Ordinance as such publication is required by law and such cost is payable within thirty (30) days of receipt of an invoice.

XX.
ORDINANCES REPEALED

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

XXI.
REQUIRED SERVICES

1. Grantee shall provide the following services to public institutions:

   A. The Grantee shall, upon request, provide one outlet of Basic Cable Service per building to all city-certified private schools, public elementary and secondary schools, fire station(s), police station(s), and City offices passed by the Cable System at no extra cost to the City or the school system. This shall mean only an energized cable to such buildings. The cost of any internal wiring shall be borne by the institution. However, no internal wiring for receipt of Cable Services or further distribution of Cable Services shall be made within any building except by authorized Cable System personnel at standard or negotiated rates for installation of such wiring.

   B. The outlets of Basic Cable Service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including, but not

limited to, those arising from copyright liability. Users of such outlets shall take reasonable precaution to prevent any use of the Cable System and such outlets in any manner that would result in inappropriate use of the system outlets or loss or damage to the system or which would result in violation of applicable laws and regulations governing such use.

C. Location of the outlets provided shall be made in consultation with appropriate authorities within each building to be connected to the Cable System.

D. Notwithstanding anything herein to the contrary, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds 150 cable feet unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet.

E. If additional outlets of Basic Cable Service are provided to any such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, equipment rental, materials and labor.

2. Grantee shall provide the following services:

A. Emergency Alert System as described above in Standards of Service, Section 4.A.

B. One educational access channel which may be viewed by all cable subscribers. This channel is to be used for non-commercial purposes only.

C. One governmental access channel which may be viewed by all cable subscribers, for use by the City of Rapid City, its departments and agencies, channel to be used at the discretion of the City of Rapid City, for non-commercial purposes only.

D. A return line from City Hall to the headend for the transmission and/or retransmission of all regular meetings of the City's governing body held in the regular meeting room.

E. Upon award of the franchise by the City and acceptance by the Grantee, Grantee shall provide products, services, and/or cash in the amount of Fifty Thousand Dollars ($50,000) to the City to be used exclusively for capital support, including equipment acquisition and related services, of educational, governmental, or economic development telecommunication purposes. In any event, two years after the effective date hereof, any amount not having been provided in products or services shall be calculated and paid in cash within thirty (30) days. Additionally, Grantee will contribute Five Thousand Dollars ($5,000.00) per year, in cash or in kind, for a period not to exceed fifteen (15) years, which sum shall be used to support the stated purposes, provided said contribution shall be subject to the City of Rapid City contributing Ten Thousand Dollars ($10,000.00) per year

for support of the stated purposes. A separate fund shall be established to contain the funds contributed by both Grantee and City, said fund to be administered according to procedures to be established by the City. An accounting of funds spent shall be made available to Grantee upon request, but in no case less frequently than annually. Grantee's contribution shall be made each year within 45 days of receiving written confirmation of the receipt into the account of the City's pledged contribution.

XXII.
EQUAL PROTECTION

If the City enters into a franchise permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the City's Public Ways for the purpose of constructing or operating a Cable System or providing cable service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

1. This Franchise may be terminated by the City upon material violation of any of its terms by the Grantee.

2. If the City becomes aware of violations of the terms of this Franchise, it shall notify the Grantee in writing of the exact nature of the alleged violation.

3. The Grantee shall have thirty days from the receipt of the notice: (a) to respond to the city contesting the allegation, or (b) to cure it, or (c) if, by the nature of the violation, such violation cannot be cured within the thirty day period, initiate reasonable steps to remedy it and notify the City of the steps being taken and the projected date that they will be completed.

4. If the Grantee fails to respond to the notice, or if the alleged violation is not remedied within sixty (60) days after the Grantee is notified of the alleged violation, or such other period as is agreed to between the Grantee and the City, the City shall schedule a public hearing to investigate the violation. Such public hearing shall be held at the next regularly scheduled meeting of the governing body of the City which is scheduled at a time which is no less than five business days therefrom. The City shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard, to present and cross examine witnesses. Upon such hearing, the City may decide to terminate the Franchise. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City de novo and to modify or revise such decision as justice may require. Such appeal to the appropriate court must be filed within sixty (60) calendar days of the issuance of the determination of the City. The City may, in its sole discretion, take any lawful action which it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of revocation of the Franchise.

5. The parties hereby agree it is not the City's intention to subject Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the local cable ordinance, which shall include but are not limited to the following:

A. in instances or for matters where a violation or a breach by Grantee of the local cable ordinance was a good faith error that resulted in no or minimal negative impact on the customers within the service area; or

B. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by Grantee of the local cable ordinance, or which were deemed to have prevented Grantee from complying with a term or condition of the local cable ordinance.

6. Enforcement of the terms of this franchise shall be under the laws of South Dakota and the United States.

XXIII.
SOUTH DAKOTA LAW

Any and all disputes arising from this agreement between the City and Grantee shall be subject to and controlled by the laws of the State of South Dakota, the United States of America and Federal Communications Commission. Any and all disputes shall be heard by a court of competent jurisdiction within the State of South Dakota.

Date adopted: December 21, 1998

CITY OF RAPID CITY

BY: _____
Mayor

ATTEST:

_____
Finance Officer

(SEAL)

First Reading: December 7, 1998
Second Reading: December 21, 1998
Published: December 28, 1998
Effective Date: January 18, 1999