

FINAL

RAMSEY/WASHINGTON COUNTIES SUBURBAN  
CABLE COMMUNICATIONS COMMISSION II  
JOINT AND COOPERATIVE AGREEMENT  
FOR THE ADMINISTRATION OF CABLE COMMUNICATIONS FRANCHISES

The parties to this Agreement are governmental units of the State of Minnesota. This Agreement supersedes any prior agreement between the parties covering the establishment of a cable communications commission and is made pursuant to Minnesota Statutes §471.59, as amended. The Commission established herein shall for all purposes be considered the successor and assignee of the Ramsey/Washington Counties Suburban Cable Communications Commission.

I. PURPOSE

The general purpose of this Agreement is to establish an organization to monitor the operation and activities of cable communications, and in particular, the Cable Communications System ("System") of the Members; to provide coordination of administration, enforcement, and renewal of the franchises of Members for their respective System; to promote, coordinate, administer and develop community cable television programming; and to conduct such other activities authorized herein as may be necessary to insure equitable and reasonable rates and service levels for the citizens of the Members.

II. NAME

The name of the organization is the Ramsey/Washington Counties Suburban Cable Communications Commission II, d/b/a the Ramsey/Washington Counties Suburban Cable Communications Commission.

### III. DEFINITIONS

Section 1. Definitions. For purposes of this Agreement, the terms defined in this Article shall have the meanings given them.

Section 2. "Board of Directors" or "Board" means the governing body of the Commission.

Section 3. "Commission" means the organization created pursuant to this Agreement.

Section 4. "City" or "Cities" or "Municipalities" means any city or township.

Section 5. "Director" means a person appointed by a Member to be one of its representatives on the Commission.

Section 6. "Grantee" means the entity providing telecommunications services to a Member pursuant to a valid franchise granted by a Member.

Section 7. "Member" or "Member Municipality" means a municipality which enters into this Agreement and is, at the time involved, a Member in good standing.

### IV. MEMBERSHIP

Section 1. The municipalities of Birchwood Village, Dellwood, Lake Elmo, Mahtomedi, Maplewood, North St. Paul, Oakdale, Vadnais Heights, White Bear Lake, White Bear Township, Willernie, and Grant Township are eligible to be initial Members of the Commission. Each Member shall grant a cable communications franchise which shall at the inception of the Commission be the cable communications franchise then held by the Ramsey/Washington Counties Suburban Cable Communications Commission and thereafter the same franchise as the other Members.

Section 2. Any Municipality geographically contiguous to any of the Municipalities named above, and served by a cable communications system through the same Grantee, may become a Member pursuant to the terms of this Agreement.

Section 3. Any municipality desiring to become a Member shall execute a copy of this Agreement and conform to all requirements herein.

Section 4. The initial Members shall be those Municipalities listed in Section 1 of this Article V who have executed a copy of this Agreement on or before October 15, 1995.

Section 5. Municipalities desiring to become Members after the date specified in Article IV, Section 4 may be admitted by an affirmative vote of two-thirds (2/3) of the authorized votes of the Members of the Commission. The Commission may, by resolution, impose conditions upon the admission of additional Members.

#### **V. DIRECTORS**

Section 1. Each Member shall be entitled to one (1) Director to represent it on the Commission. Each Director is entitled to vote in direct proportion to the percent of annual revenues attributable to the municipality represented by the Director to the total annual revenues of the system for the prior year rounded to the nearest whole number; provided, however, that each Director shall have at least one vote. For the purposes of this section, the annual revenues for each Member and the total annual system revenues as of December 31 of each year shall be determined by the records of the cable operator filed with the Commission with the franchise fee. Prior to the first Commission meeting in March of each year, the Secretary of the Commission shall determine the number of votes for each Member in accordance with this section and certify the results to the Chair.

Section 2. A Director shall be appointed by resolution of the Council of each Member. A Member shall notify the Commission office in writing of the appointment of any Director. A Director shall serve until a successor is appointed and qualifies. Directors shall serve without compensation from the Commission, but this shall not prevent a Member from compensating a Director if such compensation is authorized by law. Directors shall serve at the pleasure of the Member.

Section 3. Each Member shall appoint at least one alternate Director which may exercise all powers of a Director, in the absence of the Director, at any meeting of the Commission. A Member shall notify the Commission office in writing of the appointment of any alternate Director. The Commission, in its By-Laws, may prescribe the extent of an alternate's powers and duties.

Section 4. A vacancy in the office of Director will exist for any of the reasons set forth in Minnesota Statutes Section 351.02, or upon a revocation of a Director's appointment duly filed by a Member with the Commission. Vacancies shall be filled by appointment by the council of the Member whose position on the Board is vacant.

Section 5. There shall be no voting by proxy, but all votes must be cast by the Director or the duly authorized alternate at a Commission meeting.

Section 6. The presence of a majority of the Directors representing a majority of the total authorized votes of all Directors shall constitute a quorum, but a smaller number may adjourn from time to time.

Section 7. All official actions of the Commission must receive two-thirds (2/3) of all authorized votes cast on that issue at a duly constituted meeting of the Commission and the

affirmative vote of a majority of the total appointed Directors or six (6) Directors, whichever is less. Abstentions shall not be considered authorized votes cast.

## VI. OFFICERS

Section 1. Number/Election. The officers of the Commission shall consist of a Chair, a Vice Chair, a Treasurer and a Secretary, all of whom shall be elected at the first meeting of the Commission, and thereafter, at the annual meeting of the Commission held in November of each year. New officers shall take office at the adjournment of the annual meeting of the Commission at which they are selected.

Section 2. Chair/Vice Chair. The Chair shall preside at all meetings of the Board and Executive Committee and shall perform all duties incident to the office of Chair, and such other duties as may be delegated by the Commission. The Vice Chair shall act as Chair in the absence of the Chair.

Section 3. Secretary. The Secretary shall be responsible for the keeping of records of all of the proceedings of the Commission and Executive Committee. The Secretary shall send written notice and material pertaining to agenda items to each Director at least five (5) days prior to the meetings.

Section 4. Treasurer. The Treasurer shall be responsible for custody of the Commission's funds, shall pay its bills, shall keep its financial records and generally conduct the financial affairs of the Commission and for such other matters as shall be delegated by the Commission. In conducting the Commission's financial affairs, the Treasurer shall, at all times, act in accordance with generally accepted accounting principles. The Commission shall require that the Treasurer post a fidelity bond or other insurance against loss of Commission funds in

an amount approved by the Commission, at the expense of the Commission. Said fidelity bond or other insurance may cover all persons authorized to handle funds of the Commission.

A vacancy in the office of Chair, Vice Chair, Secretary or Treasurer shall occur for any of the reasons for which a vacancy in the office of a Director shall occur. Vacancies in these offices shall be filled by the Commission for the unexpired portion of the term.

Section 5. Executive Committee. There shall be an Executive Committee which shall consist of the four (4) officers of the Commission. To the extent specifically delegated by the By-Laws or resolution of the Commission, the Executive Committee shall have the authority to manage the business of the Commission during intervals between meetings of the Commission. The Executive Committee shall meet at the call of the Chair or upon the call of any other two (2) Members of the Executive Committee. The date and place of the meeting shall be fixed by the person or persons calling it. At least forty-eight (48) hours advance written notice of a meeting shall be given to all Members of the Executive Committee by the person or persons calling the meeting, however, notice may be waived by any or all Members who actually attend the meeting or who have given a written waiver of such notice for a specified meeting. Three (3) officers present at any meeting shall constitute a quorum of the Executive Committee. All official actions of the Executive Committee must receive the affirmative vote of a majority of those officers present and voting at a duly constituted meeting of the Committee.

## VII. MEETINGS

Section 1. By-Laws. At the first meeting of the Commission, the Commission shall adopt By-Laws governing its procedures, including the time, place, notice for and frequency of its regular meetings, the procedure of calling special meetings and such other matters as are

required by this Agreement.

### VIII. POWERS, RIGHTS AND DUTIES OF THE COMMISSION

Section 1. The power and duties of the Commission shall include the powers set forth in this Article.

Section 2. The Commission may make such contracts, grants, and take such other action as it deems necessary and appropriate to accomplish the general purposes of the organization. The Commission may not contract for the purchase of real estate without the prior authorization of the Member Municipalities. Any purchases or contracts made shall conform to the requirements applicable to Minnesota statutory cities.

Section 3. The Commission shall assume all authority and undertake all tasks necessary to coordinate, administer, enforce, and renew the Franchise of each Member except for that authority retained by a Member as the franchising authority.

Section 4. The Commission shall continually review the operation and performance of the cable communications system of the Members and prepare annual reports to the Members.

Section 5. The Commission shall undertake all procedures necessary to maintain uniform rates and to handle applications for changes in rates for the service provided by the Grantee.

Section 6. The Commission may provide for the prosecution, defense, or other participation in actions or proceedings at law in which it may have an interest, and may employ counsel for that purpose. It may employ such other persons as it deems necessary to accomplish its powers and duties. Such employees may be on a full-time, part-time or consulting basis, as the Commission determines, and the Commission may make any required employer contributions which local governmental units are authorized or required to make by law.

Section 7. The Commission may conduct such research and investigation and take such action as it deems necessary, including participation and appearance in proceedings of State and Federal regulatory, legislative or administrative bodies, on any matter related to or affecting cable communications or telecommunications as such technologies may develop over time.

Section 8. The Commission may obtain from Grantee and from any other source, such information relating to rates, costs and service levels as any Member is entitled to obtain from Grantee or others.

Section 9. The Commission may accept gifts, apply for and use grants, enter into agreements required in connection therewith and hold, use and dispose of money or property received as a gift or grant in accordance with the terms thereof.

Section 10. The Commission may delegate authority to its Executive Committee. Such delegation of authority shall be by resolution of the Commission and may be conditioned in such a manner as the Commission may determine.

Section 11. The Commission shall adopt By-Laws which may be amended from time to time.

Section 12. The Commission is hereby delegated primary responsibility for community cable television programming within or for the geographic area of the Member of the Commission, provided however that nothing herein shall prevent a Member from also providing additional government and community programming. Should any Member withdraw from the Commission, the withdrawing Member shall assume all responsibility for community cable television programming within or for the geographic boundaries of the withdrawing municipality, as more specifically delineated in Article X, of this Agreement.

Section 13. The Commission may designate an entity or entities to perform any functions the Commission deems necessary relative to the Commission's responsibility for community programming. The Commission may provide funds, support services, and the use of equipment and property to the designated entity.

Section 14. Other Actions. The Commission may exercise any other power necessary and incidental to the implementation of its powers and duties.

### IX. FINANCIAL MATTERS

Section 1. Fiscal Year. The fiscal year of the Commission shall be the calendar year.

Section 2. Expenditure of Funds. Commission funds may be expended by the Commission in accordance with the procedures established by law for the expenditure of funds by Minnesota Statutory Cities. Orders, checks and drafts must be signed by any two of the officers. Other legal instruments shall be executed with authority of the Commission, by the Chair and any other officer. Contracts shall be let and purchases made in accordance with the procedures established by law for Minnesota Statutory Cities.

Section 3. Franchise Fees. This Agreement contemplates that franchise fees shall be paid by Grantee to the Commission (subject to Article X, Section 3, Withdrawal, herein) and such fees shall be sufficient to defray the operating expenses and any other necessary expenses of the Commission. The franchise ordinances shall provide that the Commission shall collect all franchise fees paid by the cable communications company. The franchise ordinances shall provide that franchise fees collected in excess of the amount needed for the annual budget of the Commission shall be redistributed to the then existing Members according to a formula using a proportionate share of the total gross revenues derived from each of such Member.

Section 4. Budget Process. A proposed budget for the ensuing calendar year including a clear accounting of anticipated carry-over and projected reserves shall be formulated by the Commission and submitted to the Members on or before August 1. Such budget shall be deemed approved by a Member unless, prior to October 15, preceding the effective date of the proposed budget, the Member gives notice in writing to the Commission that it is withdrawing from the Commission. Final action adopting a budget for the ensuing calendar year shall be taken by the Commission on or before December 1 of each year.

Section 5. Annual Audit. The Commission's financial books and records shall be audited on or before July 1, or at such other times as the Commission may direct, by an independent auditor designated and approved by the Commission. The result of the audit shall be reported to the Members. The Commission's books and records shall be available for and open to examination by the Members and the general public at any and all reasonable times.

Section 6 Annual Report. The Commission shall submit an annual report to each Member. This report shall contain the results of the annual audit, a summary of the past year's activity and a discussion of the Commission's plans for the coming year. The report shall be submitted to each Member on or before August 1 of each year.

#### X. DURATION/WITHDRAWAL

Section 1. Duration. The Commission shall continue for an indefinite term unless the number of Members shall become less than six. The Commission may also be terminated by mutual agreement of all of the Members at any time.

Section 2. Budget Approval. In order to prevent obligation for its financial contribution

to the Commission for the ensuing year, a Member shall withdraw from the Commission by filling a written notice with the secretary by October 15 of any year giving notice of withdrawal effective at the end of that calendar year; and membership shall continue until the effective date of the withdrawal. Prior to the effective date of withdrawal a notice of withdrawal may be rescinded at any time by a Member. If a Member withdraws before dissolution of the Commission, the Member shall have no claim against the assets of the Commission. A Member withdrawing after October 15 shall be obligated to contribute its entire proportion of the Commission's budget for the ensuing year as outlined in the budget of the Commission.

Section 3. Withdrawal. Should any Member withdraw from the Commission, Grantee shall pay directly to the Member the withdrawn Member's portion of the franchise fee.

During the term of the current franchise, the Commission will continue to receive the community programming/operating grant and the equipment grant and continue to provide community programming to all Members, whether current or withdrawn. The Commission will study and report as part of its recommendation to the Members, for a proposed franchise renewal by each Member, how to allocate (if at all) community programming resources to any Member who may withdraw from the Commission subsequent to renewal .

Section 4. Dissolution. In the event of dissolution, the Commission shall determine the measures necessary to affect the dissolution and shall provide for the taking of such measures as promptly as circumstances permit, subject to the provisions of this Agreement. Upon dissolution of the Commission, all remaining assets of the Commission, after payment of obligations, shall be distributed among the then existing Members in proportion to the most recent Member-by-Member breakdown of the franchise fee as reported by the Grantee. The Commission shall

continue to exist after dissolution for such period, no longer than six months, as is necessary to wind up its affairs but for no other purpose. After dissolution, all initial Members of the Commission shall receive their pro rata share of any annual and lump sum payments made by the cable company pursuant to the franchise ordinances and any other Agreements associated therewith.

## XI. EFFECTIVE DATE/AMENDMENT

Section 1. Execution of Agreement. A Municipality may enter into this Agreement by resolution of its council, and the duly authorized execution of a copy of this Agreement. Thereupon, the clerk or other appropriate officer of that municipality shall file a duly executed copy of this Agreement, together with a certified copy of the authorizing resolution with the Commission. The resolution authorizing the execution of this Agreement shall also designate the Director and alternate for that Member, along with their addresses and telephone numbers.

Section 2. Amendment. Any Member or the Commission may propose an amendment to this Agreement by the submission of such an amendment, in writing, to all then current Members. Any such amendment shall not be effective until the written amendment is adopted by the governing board of all current Members.

Section 3. Effective Date. This Agreement is effective upon approval of the twelfth (12th) municipality currently a Member of the predecessor commission, provided such approval of all twelve (12) municipalities occurs on or before September, 1, 1995, in which case the predecessor commission shall meet for the last time, dissolve itself and transfer all assets, contracts, and other legal obligations to the successor Commission created herein. If on September 1, 1995, eight (8) or more municipalities have approved this Agreement, but not all

twelve (12) municipalities, then the predecessor commission shall meet, dissolve itself and transfer all assets, contracts, and other legal obligations to the successor Commission created herein. Any municipality which has not adopted this Agreement upon the dissolution of the predecessor commission shall have forty-five (45) days from said dissolution to adopt this Agreement and become an original Member of the Commission created herein. Any municipality joining the Commission after this forty-five (45) day period may still become a Member, subject to any terms and conditions imposed upon said municipality by the Commission.

Section 4. Previous Agreement Superseded. This Agreement, when effective, supersedes all previous Agreements between the Members hereto establishing a joint cable communications commission.

IN WITNESS WHEREOF, the undersigned municipality has caused this Agreement to be signed on its behalf this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

Municipality of \_\_\_\_\_

By \_\_\_\_\_

Its: \_\_\_\_\_

By \_\_\_\_\_

Its: Manager/Clerk

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