

**CHAPTER 13  
FRANCHISE UTILITIES**

**Section 1300 - ELECTRIC FRANCHISE ORDINANCE**

An ordinance granting to Northern States Power Company, A Minnesota Corporation, d/b/a xcel energy its successors and assigns, permission to construct, operate, repair and maintain in the City of TAYLORS FALLS, Minnesota, an electric distribution system and transmission lines, including necessary poles, lines, fixtures and appurtenances, for the furnishing of electric energy to the City, its inhabitants, and others, and to use the public ways and public grounds of the city for such purposes.

**THE CITY COUNCIL OF THE CITY OF TAYLORS FALLS, CHISAGO COUNTY, MINNESOTA, HEREBY ORDAINS:**

**SECTION 1. DEFINITIONS.**

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

**City.** The City of Taylors Falls, County of Chisago, State of Minnesota.

**City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

**Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government which preempts all or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.

**Company.** Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy its successors and assigns.

**Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.

**Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, Suite 3000, 800 Nicollet Mall, Minneapolis, MN 55402. Notice to the City shall be mailed to the City Clerk-Treasurer, 637 First Street, Taylors Falls, MN 55084. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

**Public Ground.** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

**Public Way.** Any street, alley, walkway or other public right-of-way within the City.

## **SECTION 2. ADOPTION OF FRANCHISE.**

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

2.2 **Effective Date; Written Acceptance.** This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within ninety (90) days after publication.

2.3 **Service and Rates.** The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

2.4 **Publication Expense.** The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

2.5 **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

## **SECTION 3. LOCATION, OTHER REGULATIONS.**

3.1 **Location of Facilities.** Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

3.2 **Field Locations.** Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 **Street Openings.** Company shall not open or disturb any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may

impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Way or Public Ground without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 **Restoration.** After undertaking any work requiring the opening of any Public Way or Public Ground, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

3.5 **Avoid Damage to Electric Facilities.** Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

3.6 **Notice of Improvements.** The City must give Company reasonable notice of plans for improvements to Public Ways or Public Ground where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways and Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

3.7 **Shared Use of Poles.** Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

#### **SECTION 4. RELOCATIONS.**

4.1 **Relocation of Electric Facilities in Public Ways.** If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Electric Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Electric Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation

is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

4.2 **Relocation of Electric Facilities in Public Ground.** City may require Company at Company's expense to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

4.3 **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Company Electric Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.

4.4 **No Waiver.** The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.

## **SECTION 5. TREE TRIMMING.**

Company may trim all trees and shrubs in the Public Ways and Public Grounds of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

## **SECTION 6. INDEMNIFICATION.**

6.1 **Indemnity of City.** Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 **Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or

immunity that the City could assert in its own behalf.

**SECTION 7. VACATION OF PUBLIC WAYS.**

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

**SECTION 8. CHANGE IN FORM OF GOVERNMENT.**

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

**SECTION 9. PROVISIONS OF ORDINANCE.**

9.1 **Severability.** Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

9.2 **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

**SECTION 10. AMENDMENT PROCEDURE.**

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

**SECTION 11. PREVIOUS FRANCHISES SUPERSEDED.**

This franchise supersedes any previous electric franchise granted to Company or its predecessor.

ADOPTED BY THE CITY COUNCIL ON JUNE 11, 2007  
PUBLISHED IN THE CHISAGO COUNTY PRESS ON JUNE 21, 2007  
PUBLISHED IN THE INTER-COUNTY LEADER ON JUNE 20, 2007

**Section 1305 - NSP Gas Utility**

**AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSE OF INSTALLING, ENLARGING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF TAYLORS FALLS, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO SAID CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH SAID CITY AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF SAID CITY FOR SUCH PURPOSE.**

**1305.01 Definitions.**

**Subd. 1** In this ordinance “City” means the City of Taylors Falls, County of Chisago, State of Minnesota.

**Subd. 2** “City Utility System” refers to the facilities used for providing any public utility service owned or operated by City or agency thereof, including sewer and water service.

**Subd. 3** “Company” means Northern States Power Company, a Minnesota corporation, its successors and assigns.

**Subd. 4** “Gas” as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

**Subd. 5** “Notice” means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the Vice President, NSP Gas, at 825 Rice Street, St. Paul, Minnesota 55117. Notice to City shall be mailed to the CITY CLERK.

**Subd. 6** “Public grounds” means city parks and squares as well as land held by the City for the purpose of open space.

**Subd. 7** “Public ways” means streets, avenues, alleys, parkways, walkways, and other public rights-of-way within the City.

**1305.02 Grant of Franchise.** City hereby grants Company, for a period of 25 years from the date hereof, the right and privilege of erecting a gas distribution system and using the public ways and public grounds of City for the purpose of installing, operating, repairing, and maintaining, in, on, over, under, and across the same, all gas pipes, mains, and appurtenances, usually, conveniently, or necessarily used in connection therewith, for the purpose of the transmission of gas, or the distribution of gas, for public and private use within and through the limits of City as its boundaries exist or as they may be extended in the future. Company may also do all reasonable things necessary or customary to accomplish these purposes subject, however, to the further provisions of this franchise.

**1305.03 Restrictions.**

**Subd. 1** All gas pipes, mains, regulators, and other property and facilities shall be so located, constructed, installed, and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, travel upon, and use of public ways of City. In installing, repairing, and maintaining, removing, or replacing said gas pipes, mains, and appurtenances, Company shall, in all cases, place the public ways, in, on, under, or across which the same are located in as good condition as they were prior to said operation.

**Subd. 2** Company shall not construct any new or modified installations within or upon any public grounds without receiving the prior written consent of an authorized representative of City for each such new installation. The provisions of this franchise shall not be construed to waive or modify any rights obtained by the Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable public way or public ground was established, or the Company's rights under state or county permit.

**Subd. 3** Before Company constructs any new structure or converts any existing structure for the manufacture or storage of gas, Company shall first obtain the approval of the structure and the location thereof from City. Such approval by City shall not be unreasonably withheld.

**1305.04 Service, Rates.** The service to be provided and the rates to be charged by Company for gas distribution or transmission service in City are subject to the jurisdiction of the Public Utilities Commission of this State or its successor agency.

To enable the Company to extend its distribution facilities for providing gas services to new customers of the Company in the City, City agrees that Company may impose a surcharge on the bills of its customers in the City in accordance with rates approved, or regulations issued, by the Commission.

**1305.05 Relocating.**

**Subd. 1** Whenever City shall grade, regrade, or change the line of any public way, or construct or reconstruct any City utility system therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary, and after approval of its final plans have been obtained, order Company to relocate permanently its mains, services, and other property located in said public way, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any public way or to construct or reconstruct any City utility system therein. However, after Company has so relocated, if a subsequent relocation or relocations, shall be ordered within ten (10) years from and after first relocation, City shall reimburse Company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are required because of the extension of City utilities to previously unserved areas, Company may be required to relocate at its own expense at any time.

**Subd 2** Nothing contained in this franchise shall require Company to relocate, remove, replace, or reconnect at its own expense its facilities where such relocation, removal, replacement, or reconnection is for convenience and not of necessity in the construction or reconstruction of a City utility system or extension thereof.

**Subd. 3** Any relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46 as supplemented or amended; and further, it is expressly understood that the right herein granted to Company is a valuable property right and City shall not order Company to remove or relocate its facilities without compensation when a public way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such a relocation and the loss and expense resulting therefrom are first paid to Company.

**Subd. 4** Nothing contained herein shall relieve any person, persons or corporations from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading, regrading, or changing the line of any public way, or with the construction of any City utility system.

**1305.06 Indemnification.**

**Subd. 1** The Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the gas facilities located in the City. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, the Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

**Subd. 2** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, the Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to the Company within a period wherein the Company is not prejudiced by lack of such notice. If the Company is required to indemnify and defend, it will thereafter have control of such litigation, but the Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and the Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

**1305.07 Vacation of Public Ways.** The City shall give the Company at least two weeks' prior written notice of a proposed vacation of a public way. Except where required solely for a City improvement project, the vacation of any public way, after the installation of gas facilities, shall not operate to deprive Company of its rights to operate and maintain such gas facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to the Company for failure to specifically preserve a right-of-way, under Minnesota Statutes, Section 160.29.

**1305.08 Written Acceptance.** Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk within ninety (90) days after the final passage and any required publication of this Ordinance.

**1305.09 Provisions of Ordinance.**

**Subd. 1** Every section, provision, or part of this ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this ordinance, the provisions of this ordinance shall prevail.

**Subd. 2** If either party (City or Company) asserts that the other party is in default in performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. If the dispute is not resolved within 30 days of the written notice, either party may commence an action in District Court to interpret and enforce this

franchise or for such other relief as may permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

**Subd. 3** This ordinance constitutes a franchise agreement between the City and the Company as the only parties and no provision of this franchise shall be in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

**1305.10 Publication Expense.** The expense of any publication of this franchise ordinance required by law shall be paid by Company.

**1305.11 Effective Date.** This ordinance is effective as provided by statute or charter, and upon acceptance by Company as provided in Subd. 1105.08. (October 12, 1994)

### **Section 1310 - Cable Communications Utility**

#### **AN ORDINANCE CREATING AND AWARDED A CABLE COMMUNICATIONS FRANCHISE IN THE CITY OF TAYLORS FALLS, MINNESOTA AND RULES GOVERNING THE OPERATION OF SAME**

##### **1310.01 DEFINITIONS.**

**Subd. 1** “Franchisor” is the City of Taylors Falls, Minnesota.

**Subd. 2** “Franchisee” is US Cable of Coastal-Texas, L.P., Inc.

**Subd. 3** “FCC” is the Federal Communications Commission of the United States.

**Subd. 4** “Class IV Channel” means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

**Subd. 5** “Non-voice return communications” means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.

**Subd. 6** The words “shall” and “must” are mandatory.

**Subd. 7** The word “may” is permissive.

**Subd. 8** The words “may not” are unconditionally prohibitive.

**Subd. 9** “Offering” means the proposal of Franchisee, as contained herein.

**1310.02 GRANT OF AUTHORITY.** The City Council of Taylors Falls, Minnesota, authorizes that a cable communications franchise for the installation, operation and maintenance of a cable communications system within the City limits of Taylors Falls, Minnesota, is granted to US Cable of Coastal-Texas, L.P., Inc.;

provided, however, that the franchise shall be subject to the terms and performance conditions set forth in this Ordinance.

Notwithstanding anything to the contrary in the Franchise, the Franchisee is authorized to pledge, mortgage, transfer in trust, hypothecate, and/or otherwise encumber the property and assets used or held for use in connection with the ownership and operation of the System, including the Franchise, and each party controlling or having an interest in the Franchisee is authorized to pledge, mortgage, transfer in trust, hypothecate and/or otherwise encumber its interest in the Franchisee as collateral security for such loans and financing (or for guarantees of such loans and financing) as may be incurred or assumed by US Cable from time to time in connection with the ownership and operation of the System (as amended August 28, 2000).

**1310.03 AWARD FEE.** The Franchisee shall reimburse the Franchisor for all reasonable costs, including attorneys' fees expended in soliciting and processing the franchise award.

#### **1310.04 AUTHORITY FOR USE OF STREETS.**

**Subd. 1** For the purposes of operating and maintaining a cable communications system in the City of Taylors Falls, the Franchisee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the street within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the system, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with. Prior to construction or alteration, the Franchisee shall in each case file design maps with the City and utility companies, however, the franchisee need not secure prior written approval for minor alterations or construction.

**Subd. 2** The Franchisee shall construct and maintain the system so as not to interfere with other uses of streets. The Franchisee shall make use of existing poles and other facilities available to the Franchisee.

**Subd. 3** Notwithstanding the above grant to use streets, no street shall be used by the Franchisee if the Franchisor, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such street was created or dedicated, or presently used.

**1310.05 INCORPORATION BY REFERENCE.** All terms and provisions of Franchisee's offering are hereby incorporated by reference and made a part of this Franchise.

#### **1310.06 AGREEMENT.**

**Subd. 1** The Franchisee agrees to be bound by all the terms and conditions of this Franchise.

**Subd. 2** The Franchisee agrees to comply with all provisions of its application, to provide a system within the City, and to provide the services set forth in this Ordinance.

#### **1310.07 POLICE POWERS.**

**Subd. 1** The Franchisee's rights are subject to the police powers of the City of Taylors Falls to adopt and enforce ordinances necessary to the health, safety and welfare of the public.

**Subd. 2** Any conflict between the provisions of this franchise and any other present or future lawful exercise of police powers of the City of Taylors Falls shall be resolved in favor of the City of Taylors Falls.

**1310.08 COMPLIANCE WITH STATE AND FEDERAL LAWS.** The Franchisee and the franchising authority 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 communications as they become effective.

**1310.09 FRANCHISE TERMS.** The franchise shall have an initial franchise term of twenty (20) years effective from the date of this Ordinance, and any renewal term, if granted by the franchising authority, shall be for a term of twenty (20) years. Franchise term shall expire June 9, 2021 (as amended by Ordinance 2004-08-23)

**1310.10 RENEGOTIATION OF FRANCHISE TERMS.** Renegotiation between the Franchisor and Franchisee shall occur at a minimum of one (1) year before the end of the franchise term unless franchising authority determines not to reissue the franchise to the Franchisee or desires to consider additional applications for a franchise. Such renegotiation periods must be specified and must be mutually agreed upon by the Franchisor and Franchisee.

**1310.11 FRANCHISE EXCLUSIVITY.** This franchise is non-exclusive.

**1310.12 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 franchising authority, which approval shall not be unreasonably withheld.

**1310.13 RATES, RATE CHANGE PROCEDURE AND RESIDENTIAL SUBSCRIBER CONTRACTS.**

**Subd. 1** Rates. The following rate schedule shall apply until changed in compliance with the procedures set forth below in 1110.16 Subd. 2.

**BASIC CABLE (20 CHANNELS FOR \$9.95 TAX)**

Channel 2	KTCA	Minneapolis
Channel 3	PUBLIC ACCESS	
Channel 4	WCCO	Minneapolis
Channel 5	KSTP	Minneapolis
Channel 6	OPEN	
Channel 7 (29)	KITN	Minneapolis
Channel 8	OPEN	
Channel 9	KMSP	Minneapolis
Channel 17	KTCI	Minneapolis
Channel 11	WTCN	Minneapolis
Channel 12 (41)	KXLI	St. Cloud

Channel 13

OPEN

All the channels noted above plus:

MTV	24 hr. Music Television
ESPN	24 hr. All-Sports Network
WTBS	Atlanta Georgia Super Station
CNN	24 hr. News Network
TNN	24 hr. Country Music
LIFETIME	Health and Leisure Channel
USA	Sports Children's & Specials
WGN	Chicago Super Station
NICKELODEON	Childrens Network
SPN	Variety
CBN	Religious and variety

The following premium services are available only to the Basic Service subscribers.

HOME BOX OFFICE	\$9.95/mo.
THE MOVIE CHANNEL	\$9.95/mo.
THE DISNEY CHANNEL	\$9.95/mo.

**INSTALLATION CHARGES**

First outlet	\$20.00
X-tra outlets	\$ 8.95
Disconnect	No Charge
Reconnect	\$12.95

**NOTE: DURING THE FIRST 90 DAYS AFTER TURN-ON THERE WILL BE NO CHARGE FOR INSTALLATION OF THE FIRST OUTLET.**

Installations which require more than 200 feet of cable will be charged time and material for each foot over 200 feet. In addition, installations which require pavement cutting, rock or unusual non-standard work may involve an additional charge. An estimate of the additional charge will be given to the subscriber prior to the start of the installation.

<b>CONVERTER RENTAL AND PURCHASES OPTIONS:</b>	<b>RENT</b>	<b>BUY</b>
Convertor	No Charge	N/A
Parental Control	.95/mo.	N/A
Remote Control	2.25/mo.	N/A

US Cable of Coastal-Texas, L.P. reserves the right to offer various converter rent and/or purchase options in the future. A converter deposit may be charged to those subscribers who are suspected of equipment abuse or theft.

**Subd. 2** Rate Change Procedure. Franchisee may request changes in the rate schedule by written application to the Franchisor not more than once each calendar year. No change in the existing rate schedule shall occur without the approval of the Franchisor. If, however, specific action to approve or disapprove the rate change request is not taken by the Franchisor in a period of 60 days from the

date of written request, the new rate shall automatically become effective.

**Subd. 3 Residential Subscriber Contracts.** The Franchisee will not utilize monthly service subscriber contracts without prior approval by the Franchisor.

**1310.14 FRANCHISE ADMINISTRATOR.** The City Clerk-Treasurer of Taylors Falls, Minnesota, shall be responsible for the continuing administration of this franchise.

**1310.15 LIABILITY INSURANCE.** The Franchisee shall indemnify and hold harmless the franchising authority at all times during the term of the franchise and shall maintain throughout the term of the franchise liability insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00) insuring both the franchising authority 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.

**1310.16 PERFORMANCE BOND.** At the time the franchise becomes effective and at all times thereafter until the Franchisee has liquidated all of its obligation with the franchising authority, the Franchisee shall furnish a performance bond, certificate of deposit or any other type of instrument approved by the franchising authority in the amount of One Thousand Dollars (\$1,000.00). This amount is deemed by the franchising authority to be adequate compensation for damages resulting from the Franchisee's non-performance. The franchising authority may, from year to year, in its sole discretion, reduce the amount of the performance bond or instrument.

**1310.17 LIABILITY FOR INJURY TO 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 facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

**1310.18 CHANNEL CAPACITY.** The Franchisee shall construct a cable system with Channel capacity equal to a minimum of 252 MHz of band width (the equivalent of 42 television broadcast channels).

**1310.19 CHANNEL SCHEDULE.** Within 90 days of the granting of the franchise, the franchisee shall apply for all necessary permits, licenses, certificates and authorizations. The energized trunk cable shall be extended substantially throughout the authorized area, and persons along the route of the energized cable will be provided with individual "drops", as desired, by October 1, 1986. The Franchisor may upon good cause shown, extend the October 1, 1986 completion date by up to 45 additional days. Extensions of the completion date of more than 45 days may be granted by the Franchisor only upon occurrence of unforeseen events or acts of God.

**1310.20 AUTHORIZATION TO COMMENCE CONSTRUCTION.** The Franchisee shall obtain a permit from the proper municipal authority before commencing construction of any communications system, including the opening or disturbance of any street, sidewalk, driveway or public place. If the Franchisee fails to meet the conditions of the permit, the Franchisor may, after having given the Franchisee reasonable notice and an opportunity to remedy the failure of conditions, take any action it deems necessary to protect the general health, safety, and welfare of the public. In such case, the Franchisee shall reimburse the Franchisor for the actual cost involved in any actions taken.

**1310.21 COMPLIANCE WITH APPLICABLE CODES.** 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.

**1310.22 PERMISSION OF PROPERTY OWNER REQUIRED.** No cable, line, wire, amplifier, converter or other piece of equipment owned by Franchisee shall be installed by Franchisee without first securing the written permission of the owner or owner's designee of any property involved.

**1310.23 WORK PERFORMED BY OTHERS.**

**Subd. 1** Franchisee shall give notice to the City specifying the names and addresses of any other entity, other than Franchisee, which performs services pursuant to this franchise; provided, however, that all provisions of this franchise remain the responsibility of Franchisee.

**Subd. 2** All provisions of this franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this franchise.

**1310.24 RELOCATION OF WIRES, ETC.** The following procedure shall be used by the Franchisee and franchising authority for the relocation or removal of the Franchisee's wires, conduits, cables and other property located in said street, right-of-way or public place whenever the franchising authority undertakes public improvements which affect the cable equipment.

In the event that a change is made in the grade, width or location of public streets, alleys, avenues, right-of-way or other public places by authority of the Franchisor which shall necessitate the removal of any poles, wires, transmission and distribution lines to conform to the change of grade, Franchisee shall make necessary changes in its equipment at its own expense, upon reasonable notice from the City Council or its designated official.

**1310.25 REPAIR OF STREETS.** Any and all streets which are distributed or damaged during the construction, operation, maintenance or reconstruction of the system shall be repaired by Franchisee at its expense and to the satisfaction of City.

**1310.26 ERECTION OF POLES PROHIBITED.** Franchisee shall not erect any pole on or along any street in an existing aerial utility system. If additional poles in an existing aerial route are required, Franchisee shall negotiate with the utility for the installation of the needed poles. Any such additional poles shall require the advance written approval of the Franchisor. Franchisee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions.

**1310.27 RESERVATION OF STREET RIGHTS.** The following reservations in the use or construction on streets shall be complied with by the Franchisee notwithstanding the grant to use streets made by the franchise.

Nothing in this franchise shall be construed to prevent the Franchisor from constructing sewers, grading, paving, repairing and/or altering any street, or laying down, repairing or removing water mains or constructing or establishing any other public work. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of the Franchisee. If any such property of the Franchisee herein shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, forty-five (45) days notice shall be given to the Franchisee by the Franchisor and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by the Franchisee in such manner as shall be directed by the Franchisor so that the same shall not interfere with the said public work of the Franchisor and such removal or replacement shall be at the expense of Franchisee herein.

**1310.28 TRIMMING OF TREES.** Nothing contained in this franchise shall be deemed to empower or

authorize the Franchisee to cut or trim any trees, ornamental or otherwise, in any of the streets, alleys or public highways, but the Franchisee may cut or trim trees as necessary only pursuant to a prior agreement with the owner of property which is adjacent to the street area in which such tree stands. In the event that an owner shall unreasonably refuse to permit the Franchisee to cut or trim trees, the Franchisor may nonetheless authorize such work if it is necessary to protect, repair or maintain the system.

**1310.29 TECHNICAL STANDARDS.** The rules of the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems are incorporated herein by reference.

**1310.30 SPECIAL TESTING.** At any time after commencement of service to subscribers, the Franchisor may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating a significant unresolved controversy or significant non-compliance. Such tests will be limited to the particular matter in controversy. In the event that special testing is required by the Franchisor to determine the source of technical difficulties, the cost of said testing shall be borne by the Franchisee.

**1310.31 NON-VOICE RETURN CAPABILITY.** The Franchisee shall construct and maintain a cable communications system having the technical capacity for on-voice return communications.

**1310.32 SUBSCRIBER PRIVACY.** No signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

**Subd. 1** No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or any lists that identify the viewing habits of subscribers may be sold or otherwise made available to any party other than to the company and its employees for internal business use, or to the subscriber subject to that information, unless the company has received specific written authorization from the subscriber to make the data available.

**Subd. 2** Written permission from the subscriber shall not be required for the systems conducting systemwise or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing.

**1310.33 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 investigated and resolved by the Franchisee. The Franchisor reserves the authority to establish procedures to be followed by the Franchisee in investigating and resolving complaints if it determines that the establishment of such procedures is in the public interest.

**1310.34 REPAIRS AND COMPLAINTS.** The Franchisee shall provide to the subscriber at least a toll free or collect telephone number for the reception of subscriber complaints. The Franchisee shall maintain a repair

service capable of responding to subscriber complaints or request for service within 24 hours after receipt of the complaint or request. Cost included in making repairs, adjustments and installation shall be borne by the subscriber, unless it is determined that the cable system is at fault, in which case the cost shall be borne by the Franchisee. Franchisee may interrupt system service between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and minor repairs, without notification. Interruption of service at any other time shall be only for good cause.

**1310.35 OPEN BOOKS AND RECORDS.** The Franchisor shall have the right to inspect, upon 72 hour notice, at any time during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results, record of requests for service and other like materials of the Franchisee which relate to the operation of this Franchise. Access to the aforementioned records shall not be denied by the Franchisees on the basis that said records contain "proprietary" information.

**1310.36 TERMINATION.** The franchising authority shall have the right to terminate and cancel the franchise and all rights and privileges of the franchise if the Franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the franchising authority.

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 thirty days after service of the notice in which to correct the violation.

The Franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise.

**1310.37 FORECLOSURE.** Upon the foreclosure or other judicial sale of the system, the Franchisee shall notify the Franchisor of such fact and such notification shall be treated as a notification that a change in control of Franchisee has taken place, and the provisions of this franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer of change in ownership occurred.

**1310.38 RECEIVERSHIP.** The Franchisor shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Franchisee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

**Subd. 1** Within one hundred twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this franchise and remedied all defaults thereunder; and

**Subd. 2** Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this franchise.

**1310.39 ABANDONMENT.** The Franchisee may not abandon any portion of the cable communications service provided hereunder without having given three (3) month's prior written notice to the franchising authority. No cable communications company may abandon any cable communications service or any portion thereof without compensating the franchising authority for damages resulting to it from such abandonment.

**1310.40 REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE.** Upon

termination or forfeiture of a franchise, the Franchisee shall remove its overhead cable, wires and appliances from the streets, alleys and other public places within the franchise area if the franchising authority so requests. In the event the Franchisee has not removed said cable, wires and appliances within 120 days of the date of termination or forfeiture, the Franchisor may elect either of the following procedures:

**Subd. 1** The Franchisor may declare all of the cable, wires and appliances to be the property of the Franchisor, in which case the Franchisee shall execute and deliver any and all documents necessary to effect the transfer of ownership to the Franchisor; or

**Subd. 2** The Franchisor may order that all cable, wires and appliances be removed from the streets, alleys and other public places within the franchise area by Franchisor's employees or others, and delivered to the Franchisee, all at the expense of the Franchisee.

**1310.41 MUNICIPAL RIGHT TO PURCHASE SYSTEM.** If the franchise or cable system is offered for sale, the franchising authority shall have the right to purchase the system.

**1310.42 ACCESS CHANNELS.**

**Subd. 1** The Franchisee shall provide to each of its subscribers who receive some or all of the services offered on the system, reception on at least one specially designated access channel. The specially designated access channel may be used by local educational authorities and local government on a first-come, first-served non-discriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government, the Franchisee shall lease time to commercial or non-commercial users on a first-come, first-served non-discriminatory basis if the demand for that time arises. The franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by local educational authorities, local government, or commercial or non-commercial users who have leased time. The VHF spectrum (Channels 2-13) must be used for the specially designated access channel.

**Subd. 2** The Franchisee shall establish rules for the administration of the specially designated access channel. The operating rules governing the specially designated access channel shall be filed by the Franchisee with the City Council within 90 days after any access channel is put into use.

**1310.43 NO RECOURSE AGAINST CITY.** Franchisee shall have no recourse whatsoever against city or its officials, boards, commissions, agents or employees for any loss, cost, expense or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise.

**1310.44 FRANCHISE FEES.** During the term of this franchise granted hereunder, Franchisee shall pay to the City annually an amount equal to three percent (3%) of all Basic Service revenue derived from subscribers within the City within sixty (60) days after December 31 of each year. Service revenue shall not include monies received as installation charges and charges and fees for reconnections, inspections, repairs or modifications of any installation, nor state and federal taxes relating thereto.

**1310.45 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 to any officer of Franchisee or City Clerk of the City of Taylors Falls, or when seventy-two (72) hours have lapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage pre-paid thereon, addressed to the party to which notice is being given, as follows:

If City: City of Taylors Falls  
637 First St.  
Taylors Falls, MN 55084

If to Franchisee: US Cable  
1731 E. Hwy 95  
PO Box 112  
Cambridge MN 55008

Such addresses may be changed by either party upon notice to the other party given as provided in Section 1310.13, Subd. 2.

Adopted by the Taylors Falls City Council on June 9, 1986.  
Amended by the Taylors Falls City Council on August 28, 2000.  
Amended by the Taylors Falls City Council on August 23, 2004.