

CITY OF OMAHA – QWEST BROADBAND  
SERVICES (CHOICE TV) CABLE  
TELEVISION FRANCHISE AGREEMENT,  
AS AMENDED THROUGH  
MARCH 1, 2009.

THIS DOCUMENT IS AN UNOFFICIAL COMPILATION OF THE CITY OF OMAHA CABLE TELEVISION FRANCHISE AGREEMENT WITH QWEST BROADBAND SERVICES. IN ADDITION, CONTRACT PROPOSALS SUBMITTED BY QWEST BROADBAND SERVICES OR ITS PREDECESSOR AND THE PROVISIONS OF OMAHA MUNICIPAL CODE CHAPTER 19, ARTICLE XII, ARE INCORPORATED INTO THE AGREEMENT BUT ARE NOT INCLUDED IN THIS DOCUMENT.

THIS COMPILATION IS INTENDED FOR INFORMATION PURPOSES ONLY AND AN EFFORT HAS BEEN MADE TO ASSURE ITS ACCURACY. HOWEVER, THE DOCUMENTS MAINTAINED BY THE OMAHA CITY CLERK ARE THE OFFICIAL RECORD OF THIS AGREEMENT.

## INDEX

Original contract; June 26, 1996

Amendment expanding service area to arena/convention center; August  
28, 2003

ORDINANCE NO. 33917

1 AN ORDINANCE to grant a cable television franchise to US WEST Communications, Inc.,  
2 permitting it to operate a cable television system within certain areas of the City of Omaha;  
3 to provide that this franchise shall be subject to compliance with the law and the provisions  
4 of a Franchise Agreement; to approve the Agreement setting forth terms and conditions of  
5 the franchise; to authorize the Mayor and the City Clerk to execute and attest, accordingly,  
6 the Agreement; and to provide the effective date hereof.

7 WHEREAS, on April 15, 1996, US WEST Communications, Inc., submitted an application  
8 for a franchise to operate a cable television system within certain areas of the City of Omaha and  
9 subsequently executed the attached Agreement; and,

10 WHEREAS, pursuant to federal law and regulations issued by the Federal Communications  
11 Commission, US WEST Communications, Inc., is currently offering video programming in certain  
12 areas of the City of Omaha; and,

13 WHEREAS, federal law, state law, and the Omaha Municipal Code authorize the City  
14 Council to grant a cable television franchise to US WEST Communications, Inc.; and,

15 WHEREAS, the Omaha Cable Television Advisory Committee has reviewed and evaluated  
16 the application and Franchise Agreement and recommends the franchise be granted; and,

17 WHEREAS, based upon this review, the application, and the Franchise Agreement, this City  
18 Council finds that it is in the best interests of the City that US WEST Communications, Inc., be  
19 granted a franchise to operate a cable television system within the City and the attached Franchise  
20 Agreement should be approved.

1 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

2 Section 1. That a franchise for a cable communications system within the City of Omaha is  
3 hereby granted to US WEST Communications, Inc., subject to compliance with the law, including  
4 the Omaha Municipal Code, and the terms, conditions, and obligations of the Franchise Agreement,  
5 attached hereto, and as may be subsequently amended.

6 Section 2. That the attached Agreement between the City of Omaha and US WEST  
7 Communications, Inc., to operate a cable television system is hereby approved

8 Section 3. That the Mayor and City Clerk are hereby authorized to execute and attest,  
9 respectively, the attached Agreement.

10 Section 4. This Ordinance shall be in effect and full force fifteen (15) days from and after  
11 the date of its passage.

INTRODUCED BY COUNCILMEMBER

11 Richard M. Raskin  
CITY CLERK OF THE CITY OF OMAHA

APPROVED BY: Hal Daub 7/2/96  
MAYOR OF THE CITY OF OMAHA

PASSED JUN 25 1996 7-0

ATTEST:

Brenda Brown  
CITY CLERK OF THE CITY OF OMAHA  
Deputy

APPROVED AS TO FORM:  
Thomas D. Mumford  
ASSISTANT CITY ATTORNEY

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's office.

Brenda Brown  
DEPUTY CITY CLERK  
BY \_\_\_\_\_



## AGREEMENT

THIS AGREEMENT, made and entered into this 25<sup>th</sup> day of June, 1996, by and between the CITY OF OMAHA, a Municipal Corporation, hereinafter referred to as "City", and US WEST COMMUNICATIONS, INC., a Colorado corporation presently doing business in Douglas County, Nebraska, hereinafter referred to as "USWC."

### RECITALS

A. USWC is presently operating under the FCC video dialtone regulations issued in CC Doc #87-266 in certain areas of the City of Omaha pursuant to authority granted by the Federal Communications Commission; and,

B. USWC has submitted to the City an application seeking a franchise to provide cable communications services within these areas; and,

C. After due consideration, analysis and deliberation, the City Council has found that the award of a franchise to USWC, pursuant to its application and according to the terms and conditions of this Agreement, to be in the best interest of the City and its residents.

IN CONSIDERATION of the rights and obligations set forth herein, the parties agree that the following terms and conditions shall apply through the term of this Agreement.

## ARTICLE I

### DEFINITIONS

For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) "Adjusted Gross Revenue" shall mean the sum of: (a) the total gross revenues identifiably generated by subscribers residing within the City of Omaha, and (b) the product of all other gross revenues not included in part (a), above, and not including total gross revenues identifiably generated by subscribers residing outside the City of Omaha, multiplied by the ratio of Omaha subscribers to total subscribers residing in Douglas and Sarpy counties.



- (b) "Application" shall mean any Application for Providing Cable Communication Services file by USWC with the Omaha City Clerk prior to the effective date of this Agreement and any amendments thereto.
- (c) "Basic Service" shall mean any service tier provided by USWC which includes the retransmission of local television broadcast signals.
- (d) "Cable Act" shall mean the Communications Act of 1934 as amended from time to time.
- (e) "Cable System" or "CATV System", or "System" 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. 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, 47 U.S.C. Section 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (d) an open video system that complies with Section 653 of the Communications Act of 1934, as amended, 47 U.S.C. Section 573; or (e) any facilities of any electric utility used solely for operating its electric utility system.
- (f) "City" is the City of Omaha, a municipal corporation, in the state of Nebraska.
- (g) "Company" or "Grantee" is the grantee of rights under any ordinance awarding a franchise, its successors, transfers or assigns.
- (h) "Converter" means an electronic device which converts signals from one form to another for input to a television receiver.
- (i) "Council" shall mean the governing body of the City of Omaha.
- (j) "Dedication" shall be limited to those rights of way for the benefit of the public and controlled by the City, the terms, conditions or limitations upon which are not



inconsistent with the erection, construction or maintenance of a Cable System, its structures or equipment.

- (k) "Easement", unless the context otherwise indicates, shall mean those rights of way owned by the City, the terms, conditions or limitations upon which are not inconsistent with the erection, construction or maintenance of a Cable System, its structures or equipment.
- (l) "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (m) "Franchise Area" shall have the meaning set forth in Article II, Section 3.
- (n) "Gross Revenues" shall mean all revenue derived directly or indirectly by USWC, its affiliates, subsidiaries, or parent from or in connection with the operation of a Cable System to provide cable service in the City of Omaha pursuant to this Agreement. For purposes of this paragraph, the term "cable service" shall have that meaning set forth in Section 602(6) of the Communications Act of 1934, as amended, 47 U.S.C. Section 522(6); and the term "affiliate" shall include: (1) any subsidiary or parent of the parent of USWC, and (2) any entity in which USWC, the parent, or any subsidiary of USWC holds an equity interest of greater than nineteen percent (19%). "Gross revenues" shall include but not be limited to basic subscriber services monthly fees, pay cable, installation and reconnection fees, leased channel fees, converter rental, studio rental, production equipment, and personnel fees, advertising revenue and all revenues derived from any services ancillary to providing cable services on the System. For purposes of ascertaining "gross revenues", USWC shall be permitted to deduct from "accrued gross revenues" actual bad debt loss taken during the applicable franchise period; provided that this deduction and USWC's debt collection practice shall remain subject to the review of the City's Finance Director for determining acceptable industry practice. "Gross Revenues" shall not include:
  - (i) Any taxes on services furnished by USWC and imposed directly upon any subscriber or user by the State, City or other governmental unit and collected by USWC on behalf of said governmental unit.



- (ii) Any revenues derived from the provision of any telecommunications service over the System.
- (iii) Any revenue paid by USWC to any other person as compensation for programming delivered to USWC or its subscribers, or for operating expenses of USWC, to the extent such payments are made from revenues already included in USWC's own gross revenues subject to the franchise fee.
- (iv) Promotion monies paid to USWC by programming services to the extent such monies represent reimbursement to USWC for promotion expenditures paid by USWC to non-Company affiliated resources.
- (v) The revenues of any affiliate, subsidiary, or parent when such revenue is paid by subscribers for the wholesale or retail sale or lease of goods or services of any description that are generally available from sources whose primary business is not the operation of a cable television system. Gross revenue shall include revenue received by USWC, its affiliates, subsidiaries, or parent as a compensation for carrying programming for such sales.
- (o) "Highway" is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway shall include street or alley.
- (p) "Public Property" is any real property owned by the City other than a highway, sidewalk, easement or dedication.
- (q) "Sidewalk" is that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including parkways, not on private lands.
- (r) "Service Tier" shall mean a category of cable service or other services provided by a cable operator and for which a separate rate is charged.

## ARTICLE II

### GENERAL TERMS AND CONDITIONS

#### Section 1. GRANT OF FRANCHISE.

(a) The City hereby grants USWC the non-exclusive right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the highways, sidewalks, easements, dedications and other public property now in existence and as may be created or established during its term, any poles, wires, cable, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of a Cable System within the franchise area as described herein; SUBJECT, however, to the terms and conditions of this Agreement and as otherwise provided by law. PROVIDED that it is agreed and understood that USWC's right and privilege to operate a Cable System in the franchise area is dependent upon this franchise agreement with the City of Omaha, notwithstanding the grant of any authority previously or hereafter granted by the FCC.

(b) If, during the term of this Agreement, USWC offers video programming in the franchise area as the operator of an open video system that complies with Section 653 of the Cable Act, USWC agrees to enter into any additional agreements with the City as may be necessary or permitted to carry out all provisions of this Agreement not prohibited or superseded by federal law or FCC regulations, including but not limited to provisions regarding interconnection of systems and public, community, educational, or governmental programming.

Section 2. OBLIGATION OF FRANCHISE. USWC shall, in compliance with all applicable provisions of law and this Agreement, provide to the City cable service as described in the Application. USWC shall be free to change or modify such services only in accordance with the Cable Act and this Agreement. The Application, including all representations made therein, is hereby incorporated into this Agreement and made a part hereof.

Section 3. FRANCHISE AREA TO BE SERVED. USWC shall provide all services required by this Agreement to every area of the City described in the Application (hereafter the "Franchise Area").

#### Section 4. TERM OF THE FRANCHISE.

(a) The franchise granted pursuant to this Agreement shall commence immediately upon termination of the video dialtone trial, which date shall be certified to the City in writing. The



franchise shall terminate on September 3, 2010, unless terminated or forfeited prior to that date in accordance with this Agreement or applicable law. Renewal of the franchise shall be in accordance with applicable law.

Section 5. POLICE POWER. USWC acknowledges that any right or privilege hereunder is subject to the power of the City to adopt or enforce general ordinances necessary to the safety and welfare of the public. It therefore specifically agrees and covenants to comply with all applicable existing general laws or any pertinent ordinance enacted in the future. Any conflict between the provisions of this Agreement and present laws or future lawful exercise of the City's police powers, shall be resolved in favor of the latter. In the event such exercise is not of general application in the City, or applies exclusively to USWC or Cable System, or contains provisions which are inconsistent with this Agreement, such law shall prevail only if, upon exercise, the City finds an emergency exists which constitutes a danger to health, safety, property or general welfare, or if such exercise is mandated by law.

Section 6. COMPLIANCE WITH STATE AND FEDERAL LAWS.

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

(b) Should either party determine that a material provision of this Agreement is affected by any subsequent action of the state or federal government, the parties shall negotiate in good faith any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Agreement.

Section 7. PAYMENT OF FRANCHISE FEE.

(a) USWC agrees to pay to the City a franchise fee equal to five percent (5%) of adjusted gross revenues, as defined in this Agreement. The franchise fee shall be paid quarterly to the Finance Department of the City by corporate check no later than thirty (30) days following the



expiration of each quarter year ending on March 31st, June 30th, September 30th, and December 31st. Each payment shall be accompanied by a detailed, complete and accurate statement of all gross revenues and adjusted gross revenues derived or received during the period for which payment is made. Each statement shall be verified as accurate by the proper financial representative of USWC.

(b) Within one hundred twenty (120) days following the conclusion of each fiscal year of USWC, it shall file an annual report prepared by USWC and verified as accurate by a proper financial officer of USWC. The report shall reflect the yearly total gross revenues, adjusted gross revenues, payments to the City, and all relevant financial information.

(c) In the event the franchise of USWC should be terminated or forfeited prior to the expiration of its term, USWC shall immediately submit to the City a financial statement prepared as would otherwise be required, showing the required information for the time which has elapsed since the last period. The statement shall be due to the City within thirty (30) days following the termination.

(d) No acceptance by the City of any payment shall be construed as a release or an accord or satisfaction of any claim the City may have for further or additional sums payable hereunder or for any performance or obligation of USWC. The City shall have a right to inspect or audit any records of USWC, and any such audit shall commence within twenty-four (24) months following the close of the applicable fiscal year of USWC. In the event the City determines that additional amounts are due, USWC shall pay said amount within thirty (30) days following written notice, provided however that USWC may pay said amount under protest with the right to recompute the same.

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

(f) All financial reports prepared by USWC required by this Agreement or by law shall conform to generally accepted accounting principles applied on a consistent and fair basis;

(g) The franchisee fee shall not be construed to be in lieu of or to otherwise preclude the City from levying any lawful municipal tax of general application, nor shall it be off-set by any tax or fee imposed by any other taxing agency.

Section 8. SERVICE AND RATES. USWC agrees to provide all services required by this Agreement under the following terms:

(a) It is agreed and accepted by USWC that, to the extent permitted by applicable law or regulation, now or hereafter, if any, all rates for any service which the City may by law regulate shall be fixed and regulated by the City in the manner established by ordinance consistent with federal law.

(b) For any service programming provided by USWC pursuant to this franchise for which the City has no authority to regulate rates, USWC further agrees that the rate for such service will not be increased until prior written notice, consistent with the requirements of the Cable Act, has been provided to subscribers and the City stating the amount of, and the reason for, the proposed increase. At least thirty (30) days notice shall be provided.

(c) In the event rates for services are regulated by the City, upon request by the City in connection with an audit pursuant to Section 7(d), the following accounting transactions between USWC, its parent corporation, if any, and affiliated or subsidiary companies of the system shall be fully disclosed to the City: all accounting assumptions and treatment, including but not limited to, rates of depreciation, capitalization and exposing of costs, determination of capital structure and amortization of indebtedness.

Section 9. INTERCONNECT.

(a) USWC agrees that, within 30 days after agreement is reached with Cox Cable Omaha, Inc., (hereinafter referred to as "Cox") it will physically interconnect its system with the cable television system operated by Cox within the City. Upon completion of the interconnection, USWC shall receive via the interconnection and offer to its subscribers residing within the city limits, on at least six (6) channels, the following community access or governmental access programming offered by Cox:

1. Ecumenical consortium;
2. Information and Service Network;
3. Educational consortium;
4. Educational consortium;
5. Educational consortium;
6. Health & Wellness consortium and Governmental access programming.



Should any of the above-noted programming become unavailable via the interconnection, the City shall retain the right to substitute reasonable alternative community or governmental access sources of programming to be received by USWC via the interconnection and offered to its subscribers pursuant to this section. When 51% or more of USWC subscribers reside within the Omaha city limits, USWC shall, via the interconnection, offer to its subscribers one (1) additional channel carrying public access programming to the same extent as such programming is carried to subscribers of Cox.

(b) Public, community, and governmental access programming received via the interconnection shall, to the extent reasonably possible, be shown at the same times as the programming is shown to Cox subscribers. When this requirement cannot be met because of conflicts between the programming received via the interconnection, USWC may reschedule the conflicting programming and show the programming as near to the time it is shown by Cox as is reasonably possible. To the extent required of other franchisees offering programming via the interconnection, the channel designation for programming received via the interconnection shall, except as reasonably determined by USWC, be the same as offered to Cox subscribers. All programming received via the interconnection shall be offered on the lowest service tier. USWC agrees to cooperate with the City and access channel users in developing, implementing, and enforcing procedural rules for scheduling public, community, and governmental access programming.

(c) The interconnection shall utilize a method, a route, and cost allocations agreed upon by both Cox and USWC. Cox and USWC shall be responsible for the costs of constructing and maintaining the portions of the interconnect which are part of their respective systems. USWC shall be responsible for maintaining any portion of the interconnect not identifiably part of either system, but the costs of such maintenance shall be equally shared. USWC will construct and manage the interconnection consistent with the terms of this Agreement. Each company will provide and pay for all equipment necessary at its head-end for the system to transmit the programming available through the interconnection.

(d) During the time when programming received through the interconnection is not required to be shown, USWC may use the allocated channels for other programming to the extent



such use does not interfere with, degrade, or adversely affect the signal quality or programming schedule of programming received through the interconnection.

(e) Costs of the interconnection and the programming provided via the interconnection, including any interconnection subscriber fee, shall not be credited against or in any manner used to offset any franchise fee or other financial obligation owed to the City by USWC. In the event any court of competent jurisdiction or regulation by any federal or state agency or department modifies or invalidates the terms of this paragraph so as to materially diminish or reduce the revenues of the City, the parties shall negotiate modifications to the interconnection requirement so as to avoid any reduction in revenue of the City. Notwithstanding such negotiations, the City retains the right to terminate all or any of the interconnection obligations of this Agreement if the City concludes such termination is necessary to avoid loss of revenue otherwise required by the franchise agreement to be paid by USWC to the City. USWC waives all claims for any amounts previously paid which may in any manner arise from modification or invalidation of this paragraph.

(f) USWC may place its logo or other identification on any programming received via the interconnection in addition to or in place of any logo or identification of Cox. The USWC logo or identification shall be equal in size to that of Cox and shall be shown only when the logo or identification of Cox appears in the programming. This subparagraph shall not apply to logos or identification used for on-screen credit for sponsorship of programming.

(g) The City agrees to assist USWC in any application to the Douglas County Board, the Sarpy County Board, or any other governmental entity to receive approval for USWC to offer the access programming provided for in this Section to its subscribers who live outside the city limits of Omaha. USWC shall notify the City if subscribers living outside the city limits are offered the access programming. If access programming is offered to these subscribers, USWC shall provide the City with at least 30 days written notice that such programming will be discontinued for any reason other than a temporary interruption or at the request of a subscriber.

(h) For the purposes of this Section, the following definitions shall apply:

(i) "Public Access" shall mean that portion of the channel capacity designated for use by, or used by, the public; provided, however, that the channel capacity designated for use by, or used by, a community access organization recognized under



the Cox Cable, Omaha, community access policies shall not be included within the term.

(ii) "Community Access" shall mean that portion of the channel capacity designated for use by, or used by, community access organizations recognized under the Cox Cable, Omaha, community access policies.

(iii) "Governmental Access" shall mean that portion of the channel capacity designated for use by, or used by, any local governmental entity or its agencies.

(iv) "Cox Cable, Omaha," or "Cox Cable, Omaha, Inc.," shall mean the company by that name holding a cable television franchise with the City of Omaha on the effective date of this Agreement or any successor of that company.

Section 10. INTERCONNECT FEE.

(a) USWC shall pay to the City a monthly interconnection fee determined by multiplying the number of subscribers offered the programming received via the interconnection by the proportional production cost. The fee shall be based upon all subscribers offered programming via the interconnection who do not subscribe to Cox, without regard to the franchised cable operator to which they subscribe.

(b) For purposes of this section, the following definitions shall apply:

(i) "Combined production cost" shall be Cox's average monthly community and governmental (and public once it is carried by USWC via the interconnection) access programming production cost divided by the total of the number of Cox subscribers (residing inside or outside the City) plus the number of non-Cox subscribers offered the programming received via the interconnection.

(ii) "Proportional production cost" shall be the combined production cost multiplied by the ratio the number of access channels offered to non-Cox subscribers via the interconnection bears to the number of public, community, and governmental channels used in determining combined production cost, but until the public access channel is shown by USWC via the interconnection, it shall not be counted in the ratio.



(c) The amount of the interconnection fee shall be agreed upon by Cox, USWC, and the City. If agreement cannot be reached after reasonable efforts, the fee shall be determined by the City. This Agreement shall not be construed to grant USWC any right to examine records or information provided to the City by Cox for the purpose of calculating the interconnect fee except to the extent the City, within its discretion, provides such records or information to USWC. It is agreed that the initial amount of the interconnection fee shall be 12.1¢ per subscriber per month if only USWC's City of Omaha subscribers are offered the community and governmental access channels or 10.7¢ per subscriber per month if all of USWC's subscribers are offered such access channels. Such fee shall be recalculated upon a written request to the City by Cox, USWC, or any other cable television franchisee subject to making payment of an interconnect fee to the City or upon the written demand of the City; provided, however, that such a request may be made no more frequently than once every six calendar months.

(d) This fee will be calculated on a monthly basis but may be paid to the City of Omaha quarterly. The initial fee payment shall be made at the same time as the first franchise fee payment after the fee is collected from any subscriber. To the extent permitted by law, the fee may be separately stated on bills to subscribers. The fee payments shall be placed in a grant fund and, to the extent permitted by federal or state law, used only to promote and assist public, governmental, or community access programming, but no portion will be paid to or for the benefit of Cox. The distribution of any moneys in this fund shall be within the discretion of the Omaha City Council and be subject to the approval of the Omaha City Council. Upon reasonable request to the City, USWC shall be entitled to receive an accounting of all expenditures of money from this fund.

Section 11. PUBLIC SAFETY PROGRAMMING.

(a) Upon completion of the interconnection required by the franchise agreement, as amended, and upon request of the Chief of the Omaha Police Department or Fire Department, USWC will provide cable service, including the programming received via the interconnection, to all Police Department and Fire Department stations that are within the Omaha city limits and the area served by USWC and which are not at that time served by Cox Cable Omaha, Inc., or another cable television provider offering the services required by this section. Service will include providing a secure channel or a comparable method of cablecasting that prevents video programming from being received by unauthorized persons and, after the end of 1997, any portion of the programming from



being received by unauthorized persons. Charges for service may be made in accordance with USWC's rate schedule, except that no charge may be made for any extension of cable or provision of converters or other equipment necessary to receive the secured channel programming. The Police or Fire Department connections to USWC's system, including the use of the secure channel, shall not be used to resell services in or throughout the Departments' stations, nor shall the outlets be located in areas where public viewing of the services is permitted. The City shall take reasonable precautions to prevent use of the cable services required by this paragraph in any manner contrary to law or governmental regulations.

(b) Upon completion of the interconnection required by this Agreement and at such time as the Omaha Fire Department or Police Department has the capability to transmit live programming over the cable television system of Cox Cable Omaha USWC will, through the interconnection, offer this live programming to all Omaha fire or police stations within the city limits and within USWC's area of service which are not at that time served by Cox Cable Omaha, Inc., or another cable television provider offering the services required by this subsection.

(c) This section shall not be interpreted to require USWC to provide facilities or equipment for producing or transmitting the live programming other than cable extensions and associated equipment necessary for the stations to receive the live programming.

Section 12. EDUCATIONAL SERVICE. Upon completion of the interconnection required by the franchise agreement, as amended, USWC will provide to all public, parochial, and accredited private schools within the city limits which are, (i) within the USWC service area, and are, (ii) not served by another cable television provider offering the public, community and governmental access programming available through the interconnection, sufficient cable service to permit the school to receive such public, community, or governmental programming. Such service shall be provided at no installation or monthly charge to the schools. The school's connections to USWC's system shall not be used to resell services nor shall the outlets be located in areas where public viewing of the services is permitted.

Section 13. LETTER OF CREDIT.

(a) Within ten (10) days after the execution of this Agreement, USWC shall deposit with the City a letter of credit from a financial institution in the amount of \$2,500.00. The form and content of such letter of credit shall be approved by the City Attorney. The letter of credit shall be



used to insure the faithful performance by USWC of all provisions of this Agreement, the provisions of applicable law, and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the City having jurisdiction over its acts or defaults herein, and the payment by USWC of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system.

(b) The letter of credit shall be maintained at \$2,500.00 less any amounts withdrawn in accordance with this Agreement and shall remain in effect for sixty (60) days after the conclusion or termination of this Agreement.

(c) If USWC fails after thirty (30) days written notice to pay to the City any compensation within the time prescribed herein, or fails to pay to the City any taxes due and unpaid, or fails to repay the City any damages, costs or expenses which the City is compelled to pay by reason of any act or default of USWC in connection with this Agreement or law, or fails to comply with any material provision of this Agreement or law which the City reasonably determines can be remedied by demand on the letter of credit, the City may immediately request payment from the letter of credit of the amount thereof, together with interest, if applicable. Upon request for payment, the City shall notify USWC of the amount and date hereof.

(d) Any right hereunder shall not be deemed exclusive but in addition to all other rights of the City, whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall adversely affect any other right the City may have.

(e) The letter of credit shall contain the standard endorsement that it may not be cancelled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City of a written notice of such cancellation or non-renewal.

#### Section 14. INSURANCE.

(a) USWC agrees that it will procure and maintain throughout the term of the franchise insurance as specified hereunder. USWC shall be allowed to self-insure the types and amounts of insurance so long as it is a wholly owned subsidiary of U S WEST, Inc. and has the necessary financial resources. The City shall not unreasonably withhold approval to self-insure.

(i) Commercial General Liability Insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the operations of the franchise.



Such insurance shall include coverage for independent contractor's protection, premises-operations, products/completed operations and contractual liability with respect to the liability assumed by Company hereunder. The limits of insurance shall not be less than:

Each Occurrence	\$2,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising Injury Limit	\$2,000,000

(ii) Workers' Compensation Insurance with statutory limits as required in the state(s) of operation and Employers' Liability insurance with limits of not less than \$100,000 each accident.

(iii) Comprehensive Automobile Liability Insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

(b) USWC shall forward to the City certificates of such insurance upon execution of this Agreement and upon any renewal of such insurance during the term of the franchise. The certificate(s) shall provide that (1) the City be named as an additional insured(s) as their interest may appear as respects the franchise; and (2) sixty (60) days prior written notice of cancellation of, material change or exclusions in the policy to which certificate(s) relate shall be given to the City.

Section 15: INDEMNIFICATION. Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgments for damage (including, but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection therewith) as follows:

(a) To persons or property, in any way arising out of or through any act or omission of USWC, its servants, agents or employees;

(b) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation, except that USWC shall have no liability for claims arising out of or relating to channels required under Sections 9(a) and 11(a) hereof, or public access or leased access channels, as provided in Section 638 of the Cable Act;



(c) Arising out of USWC's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to USWC in its business hereunder;

(d) The foregoing indemnity is conditioned upon the following: The City shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. In the event that suit is brought against the City either independently or jointly with USWC, on account thereof, USWC, upon notice by the City, shall defend the City in any such suit at the cost of USWC. In the event final judgment is obtained against the City, USWC shall indemnify the City to the extent required by this section and pay such judgment with all costs and hold the City harmless therefrom. Nothing herein shall be deemed to prevent the City from cooperating with Company and participating in the defense of any litigation by its own counsel at its sole cost and expense. In the event the City elects to participate in the defense of the claim, USWC shall retain the right to unilaterally settle the claim on its own terms and conditions unless the City accepts full responsibility for any and all damages and costs associated with the claim. No recovery by the City of any sum by reason of the Letter of Credit required in the Agreement shall be any limitation upon the liability of USWC to the City under the terms of this section, except that any sum so received by the City shall be deducted from any recovery which the City might have against USWC under the terms of this section.

### ARTICLE III

#### CABLE SYSTEM CONSTRUCTION.

Section 1. GENERAL CONSTRUCTION. USWC agrees to construct, install, operate and maintain the system so as to be capable of providing each service required by this Agreement to persons within the franchise area in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and F.C.C. technical standards. USWC agrees that the system provided in the franchise area shall be at least equal to the analog system provided by USWC in the area during its video dialtone trial authorized by the FCC.

#### Section 2. SERVICE

(a) USWC shall maintain for inspection by the City or its agents a record for at least three (3) years containing any requests for cable television service received by it. All other records, or copies thereof, retained or prepared by USWC in the regular course of business shall be made

available to the City or its agents upon request, provided, however, that all such information and records shall be treated confidentially by the City as provided in Article VI, Section 2(c).

(b) Within sixty (60) days following the effective date of this Agreement, USWC shall provide the City with the following information:

(i) The areas within the service areas in which the applicant will or is required to bury cable (excluding "drops"); and

(ii) The areas within the service area for which the applicant will have to obtain easements from property owners in order to furnish service to the area.

(c) USWC shall enter into contracts with any public utility companies or any other owner or lessee of any poles located within or without the service areas to whatever extent such contract or contracts are required by law, or are of advantage to USWC for use of poles and posts necessary for proper installation of the Cable System and unless prescribed by law, obtain right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from USWC's receiving antennas, obtain permission from the Federal Aviation Administration to erect and maintain antennas suitable to the needs of the Cable System and its subscribers and obtain whatever other permits a city, county, state or federal agency may require.

Section 3. SUPERVISION BY THE CITY. The Director of Public Works, or a person appointed by the Council, may from time to time issue reasonable rules and regulations concerning the construction, operation and maintenance of the Cable System as are consistent with the law and the provisions of the Agreement, provided that such rules and regulations may not increase the service obligations of, or impair the right granted hereunder to, USWC.

Section 4. MANDATORY CONTINUITY OF SERVICE.

(a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to USWC are honored. In the event that USWC elects to overbuild, rebuild, modify, or sell the Cable System, or the City gives notice of intent to terminate or fails to renew its franchise, USWC shall act so as to insure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

(b) In the event of a transfer of the franchise, or in the event a new operator acquires the Cable System, USWC shall cooperate with the City, new franchisee or operator in maintaining



continuity of service to all subscribers. During such period, USWC shall be entitled to the net revenues, if any, for any period during which it operates the Cable System.

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

Section 5. MAINTENANCE OF CABLE SYSTEM.

(a) USWC shall erect and maintain all parts of the Cable System in good condition throughout the entire franchise term in accordance with this Agreement and as provided by law.

(b) USWC shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use. Complaint procedures shall be established in the manner provided by municipal ordinance.

(c) USWC shall annually furnish the City and the Cable Television Advisory Committee with an operations report generally showing the type (basic versus premium service tier, etc.) and number of subscribers of each type, subscribers gained or lost by category, and a summary of all complaints, and their resolution, received from subscribers or customers residing within the Franchise Area concerning the operation of the system.

Section 6. SYSTEM OPERATION. In addition to all other provisions of law and this Agreement, it is agreed this system shall be installed and maintained in accordance with the highest acceptable standards of the industry as measured by systems installed in comparably sized cities, to the end that the subscriber may receive a high quality, desirable form of service.

(a) In determining satisfactory compliance with the provisions of this section, the following, among other things, may be considered:



(i) That the Cable System as installed is capable of transmitting and passing the standard color television signals without the introduction of material degradation of color fidelity and intelligence.

(ii) That the Cable System is designed and rated for 24-hour-a-day continuous operation.

(iii) That the Cable System is capable of and will produce a picture upon any subscriber's television screen in black and white or color (provided the subscriber's television set is capable of producing a colored picture) that is undistorted and free from ghost images and accompanied by proper sound, assuming typical standard production television sets in good repair, and that the television transmission is satisfactory; in any event, the picture produced shall be of a quality not less than that provided to subscribers during the video dialtone trial authorized by the FCC.

(iv) That the Cable System transmits or distributes signals of adequate strength to produce good pictures with good sound at all television receivers of all subscribers without causing cross-modulation in the cables or interfering with other electrical or electronic systems or the reception of other television or radio receivers in the area not connected to the Cable System.

(b) In the event the FCC requires that USWC carry the signal of any local, full-power television broadcast station, USWC shall furnish to its subscribers such signals at the time of broadcast by said station. No part of said local stations' signals may be altered, deleted or modified in any respect by USWC except as allowed by law.

(c) USWC shall make available at cost to all subscribers requesting them such switching devices as are necessary to permit a subscriber to use his own antenna. Such devices shall provide the best available signal quality consistent with the reasonable technical state of the art, and such devices shall not result in unreasonable interference to signals received using a subscriber-owned antenna. USWC shall inform each new subscriber prior to the time a cable connection is made that (i) such a device is available, and (ii) the cost to the subscriber of installing it. No subscriber-owned antennas shall be removed by USWC, except upon the written request of the owner.

## ARTICLE IV

### ADMINISTRATION AND REGULATION.

#### Section 1. RULES AND REGULATIONS.

(a) In addition to the inherent powers of the City to regulate and control a franchise, and those powers expressly reserved by the City or agreed to and provided for herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful police powers and in furtherance of the terms and conditions of this Agreement, and in accordance with Article II, Section 5.

(b) The City may also adopt such regulations at the request of USWC upon application.

Section 2. APPLICATION PROCEDURE. Except as otherwise specifically provided for herein, and subject to the provisions of federal law, all applications by USWC for changes in services (regulation of which is permitted by applicable law), transfer of ownership, and proposed changes in regulations, ordinances, and this Agreement, shall be made and processed according to the following procedure:

(a) Applications shall be in a form containing sufficient facts and information acceptable to the City.

(b) An application may be rejected for inadequacy by the City if it contains an inadequate description of what is being applied for, is not in an acceptable form, or contains insufficient facts and information for adequate consideration. Any determination by the city or its staff as to insufficiency must be reasonable.

(c) A rejection of an application for inadequacy shall be in writing by notice which shall state the deficiencies. The notice shall not be construed to limit further and different deficiencies on subsequent applications.

(d) Upon acceptance, the City shall review the application regarding the necessity of further staff study and reporting. The staff may submit the application to the Council if it deems it adequate and complete and in need of no further staff study or report. The City shall give notice to Company within thirty (30) days of acceptance if it will study the application prior to submission to the Council. The study shall be completed within forty-five (45) days unless such period is extended by agreement of the parties.

(e) At the conclusion of the study, the City may submit the application study and other information, documents and exhibits to the Council for consideration.

(f) At the expiration of the study period, if the matter has not been placed upon the Council agenda, USWC may request the City Clerk to place the application upon the Council agenda for the next regular meeting.

(g) During the study period, USWC shall fully cooperate with the City in providing information and documents which are related to and reasonably necessary in the proper evaluation of the application. Failure of USWC to so cooperate or USWC's unreasonable delay in providing information and documents shall be grounds for a reasonable extension by the Council of the study period or, if either the lack of cooperation or the delay substantially impairs the study, the Council may summarily deny the application.

(h) Upon submission to the Council, it shall review the application and any studies, information and documents which accompany it. Except for an application for which a public hearing is otherwise required, the Council shall approve or deny the application based upon the record within thirty (30) days. Public notice of hearing shall be given.

(i) At a public hearing pursuant to this application process, the Council shall hear reports from staff, consultants, and the public. The Council shall provide a reasonable but not unlimited opportunity for rebuttal. The Council may impose reasonable time limitations upon verbal presentations, which may be selectively waived to facilitate adequate evaluation of the application.

(j) If, at the hearing, the Council determines that additional information or documents are necessary to adequately evaluate the application, it may continue the hearing from time to time pending augmentation of the record. A continuance shall not exceed fifteen (15) days at a time.

(k) At the close of the hearing, the Council shall within thirty (30) days approve, deny or modify the application. Such action shall be final. Notice of denial and the grounds therefor may be in writing if requested. Reasonable conditions in furtherance of the purpose and intent of the franchise may be attached by the Council to an approval or modification and may be acted upon by USWC upon acceptance in writing by USWC.

(l) Any time limit may be waived by consent of both the Council and USWC.



Section 3. PERFORMANCE EVALUATION SESSIONS.

(a) The City and USWC shall hold scheduled performance evaluation sessions commensurate with those required of any other cable television franchise holder operating within the City and as may be required by federal and state law. All such evaluation sessions shall be open to the public.

(b) Special evaluation sessions may be held at any time during the term of the franchise at the request of the City or USWC, provided that both the City and USWC shall mutually agree on the time, the place and the topics to be evaluated.

(c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. USWC shall notify its subscribers of all evaluation sessions by announcement on at least one (1) channel of its Cable System between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

(d) Topics which may be discussed at any scheduled or special evaluation session may include but not be limited to service rate structures, franchise fee, penalties, free or discounted services, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to this Agreement or municipal ordinance, judicial and F.C.C. rulings, line extension policies, and Company or City rules.

(e) Subscribers of the Franchise Area may add topics or request such a session either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) subscribers of the Franchise Area, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

(f) During a review and evaluation by the City, USWC shall fully cooperate with the City and shall provide such information and documents as the City may need to reasonably perform the review.

(g) If at any time in its review, the City determines that reasonable evidence exists of inadequate Cable system performance, it may require USWC to perform tests and analyses directed toward such testing and to prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (i) The nature of the complaint or problem which precipitated the special tests;
- (ii) What system component was tested;



- (iii) The equipment used and procedures employed in testing;
- (iv) The method, if any, by which such complaint or problem was resolved;
- (v) Any other information pertinent to said tests and analyses which may be required.

(h) The City may require that tests be supervised at Company's expense by a professional engineer not on the permanent staff of USWC and approved by the City. The engineer should sign all records of special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken. If the engineer certifies that USWC's system in all pertinent respects is operating within FCC performance specifications or that any inadequate performance is due to causes beyond the control of USWC, the City shall reimburse USWC for the reasonable fee and expenses of the architect.

(i) The City's right under Article IV, Section 3, shall be limited to requiring tests, analysis, and reports covering specific subjects and characteristics based upon said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service or services not in compliance with this Agreement or law.

Section 4. SUPERVISION OF THE FRANCHISE. The Council may appoint a staff person who shall be responsible for the continued administration of USWC's franchise. Notice of such appointment shall be conveyed to USWC.

Section 5. LIQUIDATED DAMAGES.

(a) For the violation of any of the following provisions of this franchise, liquidated damages shall be chargeable to the letter of credit, provided, however, that before any liquidated damages are assessed, the City must provide written notice, by certified mail, of the violation to USWC and provide USWC with a period of not less than thirty (30) days to cure the violation, as follows:

- (i) For failure to provide data and reports as requested by the City and as required herein or by ordinance - \$25.00 per day.
- (ii) Forty-five (45) days following adoption of a resolution of the Council determining a failure of Company to comply with an identified material construction, operational, or maintenance standard, USWC shall pay to the City Fifty Dollars (\$50.00) per day for each



day, or part thereof, that such noncompliance continues. Provided, however, if such compliance cannot be effected in forty-five (45) days for reasons beyond the control of USWC, which shall be evidenced to the satisfaction of the City, the City agrees to reasonably extend the time permitted for such compliance before assessing liquidated damages.

(b) The letter of credit deposited shall become the property of the City in the event that its franchise is cancelled by reason of the default of USWC.

USWC shall be entitled to the return of the letter of credit, or portion thereof as remains on deposit with the Director of Finance at the expiration of the term of this Agreement, provided that there is then no outstanding default on the part of USWC.

(c) Damages and costs shall be paid in the manner provided in Article II, Section 9.

Section 6. FORFEITURE AND TERMINATION.

(a) In addition to all other rights and powers retained by the City under this Agreement or authorized by law, the City reserves the right to forfeit and terminate the franchise and all rights and privileges of USWC hereunder in the event of a substantial breach of its material terms and conditions. A substantial breach by USWC shall include, but shall not be limited to, the following:

(i) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the City made pursuant to the franchise;

(ii) Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the City or its subscribers or customers.

(iii) After receiving any opportunity to cure required herein, intentional failure to provide any service USWC is obligated to provide pursuant to this Agreement;

(iv) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City or such interruption is beyond the reasonable control of USWC; or

(v) Material misrepresentation of fact in the application for or negotiation of the franchise.

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



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

(d) The Council shall hear and consider the issue, and shall hear any person interested therein, including USWC, and shall determine in its discretion whether or not any violation by USWC has occurred.

(e) If the Council shall determine the violation by USWC was the fault of USWC and within its control, the Council may, by resolution, declare that the franchise of USWC shall be forfeited and terminated, unless there is compliance within such period as the Council may fix, such period to be not less than ninety (90) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

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

Section 7. FORECLOSURE. Upon the foreclosure or other judicial sale of all or a substantial part of the Cable System, USWC shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of USWC has taken place, and the provisions of this Agreement governing the consent of the Council to such change in control of USWC shall apply.

Section 8. RECEIVERSHIP. The Council shall have the right to cancel this Agreement one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of USWC, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:



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

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

## ARTICLE V

### MISCELLANEOUS PROVISIONS

#### Section 1. \_\_\_\_\_

(a) Any notice for which time is not otherwise provided, which is required by law or by this Agreement, shall be made by publication in a local newspaper of general circulation at least ten (10) days prior to the meeting and by posting similarly at City Hall. Additionally, all meetings shall be announced on at least one channel of the Cable System between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days immediately preceding the meeting or hearing.

(b) All notices from USWC to the City pursuant to this Agreement shall be to the City Clerk, unless otherwise provided. USWC shall maintain, throughout the term of this franchise, an address for service of notices by mail. USWC shall also maintain within the City an office and telephone number for the conduct of matters related to this franchise during normal business hours. All notices shall be sent by certified mail.

(c) USWC shall pay the costs associated with the publication of any notice required herein or otherwise mandated by law.

#### Section 2. BOOKS AND RECORDS.

(a) USWC agrees to keep on file with the City a current list of all stockholders holding more than 10% of the outstanding stock. The list shall show the amount of such ownership and identify the current officers. The list shall be updated within thirty (30) days to reflect any changes in ownership of more than 10% of the outstanding stock.



(b) All financial reports required to be filed with any source or which are otherwise prepared by USWC, and which are otherwise publicly available, shall be supplied to the Finance Director of the City upon written request.

(c) Whenever USWC shall make available for inspection by the City or submit to the City any information or reports containing information reasonably considered proprietary by USWC, the City shall keep such reports and information confidential, unless disclosure is required by court order or applicable law. At the time the information or reports are made available to, or submitted to, the City, USWC shall identify all information or reports it considers proprietary.

Section 3. RELOCATION. Whenever the City, County, or State of Nebraska shall require the relocation or reinstallation of any property of USWC, it shall be the obligation of USWC, upon notice of at least thirty (30) days, to immediately remove and relocate or reinstall said property at the expense of USWC, as may be reasonably necessary to meet the requirements of the City, County, or State, subject to any reimbursement provided by law.

Section 4. MUNICIPAL USE OF COMPANY FACILITIES. The City shall for any lawful purpose have the right, through the term of this franchise, to install and maintain free of charge upon the poles owned by USWC that were erected solely for its Cable System, any wire and pole fixtures that do not unreasonably interfere with the operations of USWC. The City agrees to indemnify, defend and hold harmless USWC from any claims resulting from its installation and use thereof.

Section 5. ADVISORY COMMITTEE. USWC agrees to work reasonably with and support the activities of the Omaha CATV Advisory Committee.

Section 6. REMOVAL OF FACILITIES. Upon termination of service to any subscriber, USWC shall at its own expense promptly remove all of its facilities and equipment from the premises of such subscriber upon his written request, including subscriber drops which are not buried.

Section 7. OTHER PETITIONS AND APPLICATIONS. Upon written request from the City, USWC shall submit to the City copies of all otherwise publicly available pleadings, applications, notifications and documents of any kind relating to its cable television operations within the franchise area that are submitted by Company to any federal, state or local court, together with copies of all otherwise publicly available decisions, correspondence or documents evidencing actions by any such court. Upon request of the City, Company shall submit to the City any

otherwise publicly available applications, notifications or documents pertaining to any matter affecting cable television operations within the franchise area that are submitted by Company to any federal, state or local regulatory agency or governmental body.

Section 8. COMPANY RULES AND REGULATIONS. USWC shall have the authority to promulgate such rules and regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable USWC to exercise its rights and perform its obligations, and to assure uninterrupted service to each and all of its subscribers. Such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable local, state and federal laws, rules and regulations.

Section 9. LOCKOUT DEVICE. USWC agrees to supply at cost a device sufficient to lock out any pay cable services to any subscriber requesting such device, provided USWC shall also inform all subscribers that such a device is available.

Section 10. TRANSFER OF OWNERSHIP OR CONTROL.

(a) USWC agrees that its franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the City, which consent will not be unreasonably withheld. USWC may, however, transfer or assign the franchise to a wholly-owned or majority-owned subsidiary of USWC or of USWC's parent company U S West, Inc., and such subsidiary may transfer or assign the franchise back to USWC without such consent. The proposed assignee must show financial responsibility as reasonably determined by the City and must agree to comply with all provisions of the franchise.

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

controlling party, and USWC shall assist the City in any such inquiry. Violation of this section shall be a substantial breach of a material term of this Agreement.

(c) The City shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to USWC within sixty (60) days following receipt of written notice of the proposed transfer or assignment.

(d) The consent or approval of the Council to any transfer of USWC shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall by its terms be expressly subordinate to the terms and conditions of this franchise.

(e) In the absence of extraordinary circumstances, the City will not approve any transfer or assignment of the franchise prior to substantial completion of construction and activation of the Cable System.

#### Section 11. REMOVAL OF CABLE SYSTEM.

(a) At the expiration of the term for which this franchise is granted, or upon its termination as provided herein, or otherwise by law, USWC shall forthwith, upon notice by the City, remove at its own expense all aerial portions of the Cable System from all highways, sidewalks, easements, dedications and public property within the Franchise Area, and upon a determination in the reasonable discretion of the City that such removal is required in order to eliminate or prevent a hazardous condition, shall remove such underground portions of its Cable System. If USWC fails to do so, the City may perform the work at USWC's expense. USWC shall be entitled to receive notice in writing from the City setting forth one or more of the occurrences hereinafter provided, and that USWC shall have nine (9) calendar months from the date upon which said notice is received to remove said properties as hereinabove required. USWC shall cooperate with and shall not interfere with any other grantee of a cable franchise for the City. If USWC fails to do so, the City may perform the work at USWC's expense. A bond in the amount of \$5,000.00 to cover this expense shall be forwarded within ten (10) days of execution of this Agreement by USWC.

(b) The Director of Public Works of the City is herein and hereby authorized to enforce the provisions of this section of this Agreement as hereinafter provided:

(i) Following the expiration, forfeiture, termination or revocation of this franchise in accordance with the procedures set forth herein, the Director shall notify USWC in writing that within nine (9) calendar months following receipt of said



notice, USWC shall remove from the streets of the City upon and over which its properties are located its properties in accordance with subsection (a), unless otherwise authorized and permitted by the Director of Public Works.

(ii) The Director of Public Works may declare abandoned any property of USWC remaining in place nine (9) months after notification from the Director as hereinabove provided, and the same shall be considered permanently abandoned property, unless the Director of Public Works extends the time for removal of the property.

(c) Any property abandoned by USWC as hereinabove or hereinafter provided shall become, at the option of the City, property of the City and USWC agrees to execute and deliver an instrument in writing, transferring its ownership interest in any such property to the City.

Section 12. EMINENT. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of the City to acquire the property of the grantee through the exercise of eminent domain in accordance with applicable law.

Section 13. COMPANY TO HAVE NO RECOURSE. Except as expressly provided in this Agreement, USWC herein shall have no recourse whatsoever against the City for any loss, cost, or expense or damage arising out of any of the provisions or requirements of this Agreement or law or because of the lawful enforcement thereof by the City, nor for the failure of the City to have the authority to grant all or any part of any franchise. USWC expressly acknowledges that, in accepting its franchise by executing this Agreement, it did so relying upon its own investigation and understanding of the power and authority of the City to grant a franchise. By accepting its franchise and becoming signatory hereto, USWC acknowledges that it has not been induced to enter into this Agreement by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City or by any other third person concerning any term or condition not expressed herein. USWC further acknowledges by the acceptance of its franchise that it has carefully read the terms and conditions hereof, and of law, and is willing to and does accept all of the risks of the meaning of such terms and conditions.

Section 14. FAILURE OF CITY TO ENFORCE THIS AGREEMENT - NO WAIVER OF

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conditions of this Agreement or of the law by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

Section 15. TIME Whenever this Agreement shall set forth any time for any material action to be performed by or on behalf of USWC, such time shall be deemed of the essence and any failure of USWC to perform within the time allotted shall, subject to any right to cure granted by this Agreement or by law, be sufficient grounds for the City to revoke its franchise, unless the failure to comply is due to excusable delay or is beyond the reasonable control of USWC.

Section 16. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE. In addition to that provided by applicable law, and to the extent not inconsistent with the Cable Act, during the performance of this Agreement USWC agrees as follows:

(a) USWC shall not discriminate against any employee applicant for employment because of race, religion, color, sex or national origin. USWC shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: Recruited, whether advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. USWC agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.

(b) USWC shall, in all solicitations or advertisements for employees placed by or on behalf of USWC, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

(c) USWC shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of USWC's commitments under the equal employment opportunity clause of the city and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) USWC shall furnish to the contract compliance officer, upon request, all federal forms containing the information and reports required by the federal government for federal

contracts under federal rules and regulations or required by the FCC and, to the extent not otherwise provided, all information required by sections 10-192 to 10-194, inclusive, and shall permit reasonable access to its records. Records accessible to the contract compliance officer shall be those which are related to paragraphs (1) through (7) of this subsection and only after reasonable notice is given USWC. The purpose for this provision is to provide for investigation to ascertain compliance with the program provided for herein.

(e) USWC shall take such actions with respect to any subcontractor as the city may direct as a means of enforcing the provisions of paragraphs (1) through (7) herein, including penalties and sanctions for noncompliance; however, in the event USWC becomes involved in or is threatened with litigation as the result of such directions by the city, the city will enter into such litigation as is necessary to protect the interests of the city and to effectuate these provisions [of this division]; and in the case of contracts receiving federal assistance, USWC or the city may request the United States to enter into such litigation to protect the interests of the United States.

(f) Upon written request by the City, USWC shall cause his subcontractors, if any, to file compliance reports with USWC in the same form and to the same extent as required by the federal government for federal contracts under federal rules and regulations. Such compliance reports shall be filed with the contract compliance officer. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the subcontractors.

(g) USWC shall include the provisions of paragraphs (1) through (7) of this section, "Equal Employment Opportunity Clause," in every subcontract so that such provisions will be binding upon each subcontractor.

Section 17. OFFICE. USWC agrees to maintain an office reasonably convenient to and accessible by subscribers served pursuant to this Agreement in the City. USWC further agrees to maintain a local non-toll telephone number for use by subscribers served pursuant to this Agreement.

Section 18. SEVERABILITY. If any section, subsection, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.



Section 19. EFFECTIVENESS OF AGREEMENT. This Agreement shall be effective from and after execution by the City and shall remain in effect through the length of the term of the franchise extended to USWC, unless mutually terminated by the parties hereto, or otherwise concluded in accordance with the provisions hereof or applicable law.

IN WITNESS WHEREOF, the foregoing agreement is dated this 20 day of July, 1996

U S WEST Communications, Inc.  
a Colorado corporation

ATTEST

Robert L. Boozer  
DIRECTOR - U.S. WEST

By Frank W. Fabrick  
Title: General Manager - U.S. WEST TELEPHONE

ATTEST:

Buster Brown  
City Clerk  
*Deputy*

CITY OF OMAHA, a municipal corporation

By Hal Daub 7/2/96  
Mayor of the City of Omaha

APPROVED AS TO FORM:

Thomas D. Wingard  
Assistant City Attorney

P:\LAW\2537.MAF





City of Omaha  
Mike Fahey, Mayor

RECEIVED  
CITY OF OMAHA  
CITY CLERK

**Law Department**

Omaha/Douglas Civic Center  
1819 Farnam Street, Suite 804  
Omaha, Nebraska 68183-0804  
(402) 444-5115  
Telefax (402) 444-5125

**Paul D. Kratz**  
City Attorney

Honorable President

and Members of the City Council,

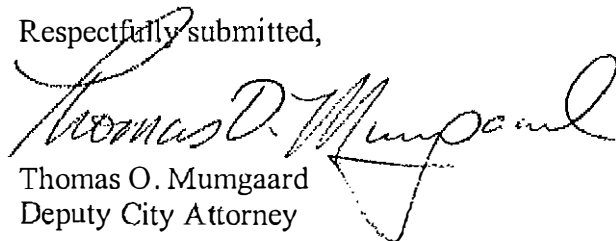
The attached ordinance is prepared in response to an application for amendment submitted by Qwest Broadband Services, Inc. That corporation currently holds a franchise to offer cable television services within a limited area of the City west of I-680. Qwest has submitted an application to amend the franchise agreement to include the Convention Center/Arcna at 455 North 10<sup>th</sup> Street within their franchise area.

This ordinance, if adopted, will permit Qwest to provide cable television service to the Convention Center/Arena during the time when Qwest has a contract with MECA to do so. At the end of that contract, the facility will automatically be deleted from the franchise area. Qwest can use existing lines between their current franchise and the Convention Center/Arena to transmit the cable signals but cannot sell their services along that route and no new cable lines will be constructed. Revenue received by Qwest for cable services at the Convention Center/Arena will be subject to the City's 5% cable television franchise fee. The ordinance will become effective immediately upon passage.

The franchise agreement with Qwest permits the City to take up to 45 days to study the application if necessary. The public hearing on the amendment cannot be continued for more than 15 days at a time. The City Council must approve, deny, or modify the application within 30 days after the close of the public hearing. The Council may condition approval of the amendment on reasonable conditions that are in furtherance of the purpose and intent of the franchise and Qwest can either accept or reject those conditions.

Additional information can be obtained from the application submitted by Qwest to the City Clerk.

Respectfully submitted,



Thomas O. Mumgaard  
Deputy City Attorney

ORDINANCE NO. 36323

AN ORDINANCE to amend the cable television franchise agreement between the City of Omaha and Qwest Broadband Services, Inc.; to expand the franchise area to include the convention center and arena at 455 North 10<sup>th</sup> Street; to authorize the Mayor and City Clerk to execute and attest the franchise agreement amendments; and to fix the effective date hereof to be immediately upon passage.

WHEREAS, by Ordinance No. 33917, adopted on June 25, 1996, the City Council of the City of Omaha granted a franchise to operate a cable communications system within the City of Omaha to US West Communications, Inc., which was subsequently assigned to Qwest Broadband Services, Inc. ("Qwest"); and,

WHEREAS, the franchise agreement entered into between Qwest and the City of Omaha controlling the operation of that cable communications system provides that Qwest may apply for amendments to the franchise agreement; and,

WHEREAS, Qwest has applied to amend the franchise agreement to include within the franchised area additional areas within the City; and,

WHEREAS, based upon the application of Qwest this City Council finds that it is in the best interests of the City that the franchise agreement with Qwest to operate a cable communications system should be amended.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That the franchise agreement for a cable communications system within the City of Omaha entered into with US West Communications, Inc., and succeeded to by Qwest Broadband Services, Inc., is hereby amended as reflected on Exhibit "A", attached hereto.

Section 2. That the Mayor and City Clerk are hereby authorized to execute and attest, respectively, the attached franchise agreement amendment between Qwest Broadband Services, Inc., and the City of Omaha.

Section 3. This Ordinance is not of a legislative character and shall be in full force and take effect immediately upon passage by virtue of the authority granted by Section 2.12 of the Home Rule Charter of the City of Omaha, 1956, as amended.

INTRODUCED BY COUNCILMEMBER

James D. Volk Jr.

APPROVED BY:

Mike Jahay 8/28/03  
MAYOR OF THE CITY OF OMAHA DATE

PASSED AUG 26 2003 7-0

ATTEST:

Bonnie Brown 8/28/03  
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

Thomas D. Thompson  
Deputy CITY ATTORNEY DATE

3 RECEIVED  
03 AUG -4 PM 3:59  
CITY OF OMAHA  
OMAHA, NE 68101

**APPLICATION FOR AMENDMENT  
OF  
CABLE TELEVISION FRANCHISE**

**IDENTIFICATION OF APPLICANT**

Name of Franchise Holder: Qwest Broadband Services, Inc.

Franchise Holder Address: 2441 South 130th Circle, Omaha, Nebraska 68144

Date Original Application Submitted: April 15, 1996

Date Original Franchise Approved: June 25, 1996 (Franchise dated July 2, 1996)

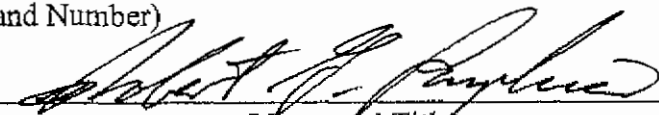
Date This Amendment Application Submitted: August 4, 2003

Name, title, and telephone number of the person to whom inquiries about this amendment should be made:

Name: Robert G. Lanphier

Title: Director - Nebraska Public Policy

Telephone: (402) 422-7337  
(Area Code and Number)

Authorized Signature:   
(Name and Title)

Signature Date: August 4, 2003

## DIVISION A: DESCRIPTION OF THE PROPOSED AMENDMENT

Describe the amendment you propose. Please identify all pertinent provisions of the Franchise Agreement that will be amended, altered, or affected and explain the manner in which they will be amended, altered, or affected. Provide any language or terms you propose should be added to the Agreement and identify any language or terms you propose should be deleted from the Agreement.

The amendment ("amendment") will amend Section 3 and Section 7 of Article II, of FRANCHISE AREA TO BE SERVED and PAYMENT OF FRANCHISE FEE in the AGREEMENT dated July 2, 1996 between the City of Omaha ("City") and Qwest Broadband Services, Inc. ("Qwest") (successor in interest to U S WEST Communications, Inc.)

The following language will be added to Section 3:

"Company shall also provide Cable Services to the specific location in the City known as the Metropolitan Entertainment and Convention Authority Center (the "Convention Center"), located at 455 N. 10th Street. Company is authorized to connect its head end facility located at 2441 S. 130th Circle, Omaha, by either (a) buying existing fiber located underground in public rights of way, or (b) purchasing telecommunications services from telecommunications services providers. The area through which these connection lines pass that is outside of the franchise area identified in the Application will not be considered part of the Franchise Area and cable services will not be offered within this outside area. Company shall comply with all generally applicable rules and regulations for use of public rights of way in this outside area and no portion of the Franchise Agreement shall be construed to extend any rights or obligations to these outside areas. The Convention Center location will be part of the Franchise Area only during the term of any contract for Cable Services between Company (or its successors) and the Metropolitan Entertainment and Convention Authority (or its successors)."

The following language will be added as a new subparagraph (h) in Section 7:

"(h) Charges or fees of any nature from the operation of a cable system in that portion of the franchise area that includes the Convention Center shall be separately itemized on any bill, invoice, or other document submitted to any person or entity by the Company with respect to that portion of the cable system and the statement of gross revenues and adjusted gross revenues that accompanies payment of the franchise fee shall separately itemize and identify gross revenues derived from the operation of a cable system in the Convention Center franchise area."



b. Microwave	\$ 0	\$ 0
c. Headend	\$ 0	\$ 0

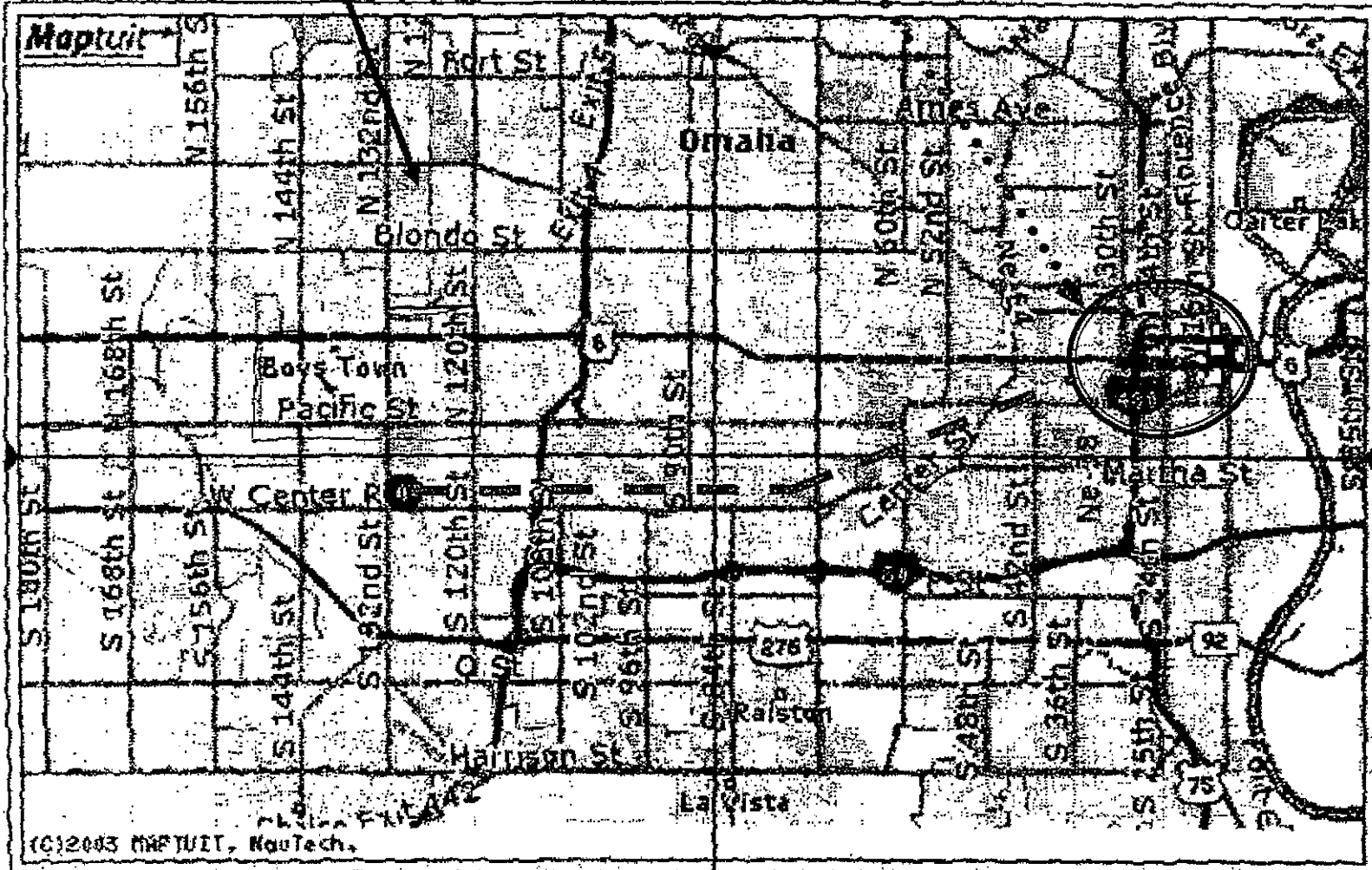
DIVISION E. STUDIES, INFORMATION, AND DOCUMENTATION  
SUPPORTING THE PROPOSED AMENDMENT.

Describe all studies, written information, and documentation you wish the City to review while considering this proposed amendment, including a description of how the study, information, or document supports the proposal.

Attach to this Application a legible copy of all studies, written information, or documentation you wish the City to review and provide an index for this attachment.

This Amendment is a request to extend the present service area of Qwest Choice TV to include the new Omaha Convention Center. Approval of the Amendment by the Council will allow Qwest Choice TV to provide cable services to the Omaha Convention Center. A copy of all portions of any agreement with the Metropolitan Entertainment and Convention Authority pertaining to providing Cable Services at the Convention Center will be provided before the date of any public hearing on this application.

Existing Service Area shown in Yellow



(C)2003 MAPTUIT, NauTech.

The map is centered near 1057 S 90TH ST, OMAHA, NE, 68114, US

Note: — — — not intended to convey actual fiber optics route.

## EXHIBIT "A"

Article II, Section 3, of the Franchise Agreement entered into on June 25, 1996, is amended to read as follows:

Section 3. **FRANCHISE AREA TO BE SERVED.** ~~USWC~~~~The Company~~ shall provide all services required by this Agreement to every area of the City described in the Application (hereafter the "Franchise Area"). ~~Company~~ shall also provide Cable Services to the specific location in the City currently known as the Metropolitan Entertainment and Convention Authority Center (the "Convention Center"), located at 455 N. 10<sup>th</sup> Street. ~~Company~~ is authorized to connect its head end facility located at 2441 S. 130<sup>th</sup> Circle, Omaha, by either (a) buying existing fiber located underground in public rights of way, or (b) purchasing telecommunications services from telecommunications services providers. The area through which these connection lines pass that is outside of the franchise area identified in the Application will not be considered part of the Franchise Area and cable services will not be offered within this outside area. ~~Company~~ shall comply with all generally applicable rules and regulations for use of public rights of way in this outside area and no portion of the Franchise Agreement shall be construed to extend any rights or obligations to these outside areas. The Convention Center location will be part of the Franchise Area only during the term of any contract for Cable Services between ~~Company~~ (or its successors) and the Metropolitan Entertainment and Convention Authority (or its successors).

Article II, Section 7, of the Franchise Agreement entered into on June 25, 1996, entitled "PAYMENT OF FRANCHISE FEE", is amended to include a new subparagraph reading as follows:

(h) Charges or fees of any nature from the operation of a cable system in that portion of the franchise area that includes the Convention Center shall be separately itemized on any bill, invoice, or other document submitted to any person or entity by the Company with respect to that portion of the cable system and the statement of gross revenues and adjusted gross revenues that accompanies payment of the franchise fee shall separately itemize and identify gross revenues derived from the operation of a cable system in the Convention Center franchise area.

IN WITNESS WHEREOF, the foregoing agreement is dated this 28<sup>th</sup> day of August, 2003.

Qwest Broadband Services, Inc.,  
a Colorado Corporation

ATTEST:

*Thomas J. Mansfield*  
Title: Deputy City Attorney

By

*Robert G. Lanphier*  
Print name: Robert G. Lanphier  
Title: Director, Nebraska Policy Plan

CITY OF OMAHA, a municipal corporation

ATTEST:

*Frank Brown*  
City Clerk

By

*Mike Jahoy 8/28/03*  
Mayor of the City of Omaha

APPROVED AS TO FORM:

*Thomas J. Mansfield 8-04-03*  
Deputy City Attorney

P:\Law\4642sap.doc

ORDINANCE NO. 36323

**AN ORDINANCE** to amend the cable television franchise agreement between the City of Omaha and Qwest Broadband Services, Inc.; to expand the franchise area to include the convention center and arena at 455 North 10<sup>th</sup> Street; to authorize the Mayor and City Clerk to execute and attest the franchise agreement amendments; and to fix the effective date hereof to be immediately upon passage.

29 ✓

**PRESENTED TO COUNCIL**

1st Reading AUG 12 2003 - Hearing  
8/19/03

Hearing AUG 19 2003 - Over to  
8/26/03

Final Reading AUG 26 2003

**Passed** 7-0

**PUBLICATIONS**

**PUBLICATION OF HEARING**

Date 8-15-03

**PUBLICATION OF ORDINANCE**

Date 9-5-03

**BUSTER BROWN**  
City Clerk