

**CITY OF FINLAYSON**

***ORDINANCE No. 03-01***

**CABLE TELEVISION FRANCHISE**

**Passed by the Finlayson City Council  
July 14, 2003**



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**CABLE TELEVISION FRANCHISE**

**AN ORDINANCE GRANTING A FRANCHISE TO SAVAGE COMMUNICATIONS, INC. TO CONSTRUCT AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF FINLAYSON; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS**

The City Council of the City of Finlayson ordains:

**STATEMENT OF INTENT AND PURPOSE**

The City intends, by the adoption of this Franchise, to bring about the development and operation of a Cable Communications System. Such a development can contribute significantly to the communication needs and desires of the City and its residents and achieve better utilization and improvement of public services with the development and operation of a Cable Communication System.

Past studies and experience by the City have led to a proposed Cable Communications System which, in the judgment of the Council, is best suited to the City. This has resulted in the preparation and adoption of this Franchise.

**FINDINGS**

In the review of the application of Savage Communications, Inc. ("the Franchisee"), and as a result of a public hearing, the City Council makes the following findings:



1. The Franchisee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

2. The Franchisee's plans for constructing, upgrading, and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;

3. The Franchise granted to the Franchisee by the City complies with applicable federal and state laws, rules, and regulations; and

4. The Franchise granted to the Franchisee is nonexclusive.

#### SECTION 1. DEFINITIONS.

A. "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with federal and state laws, rules, and regulations.

B. "City" is the City of Finlayson, Minnesota.

C. "FCC" is the Federal Communications Commission of the United States.

D. "Franchise" means the rights and obligations extended to the Franchisee to own, operate and maintain a cable communications system within the boundaries of the City of Finlayson and manifested by this Franchise Ordinance.

D. "Franchisee" is Savage Communications.



E. "Class IV Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

F. "Non-voice return communications" means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.

G. "System" means a system of antennas, cables, wires, lines, towers, waveguides or other conductors, converters, equipment or facilities located in the City, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronic or electrical signals, but shall not include any system wholly internal to one or more multiple unit dwellings under common ownership, control or management, and which does not use City streets or public property.

H. The words "shall" and "must" are mandatory.

I. The word "may" is permissive.

J. The words "may not" are unconditionally prohibitive.

## SECTION 2. GRANT OF AUTHORITY

The City Council of Finlayson, Minnesota, hereby grants a cable communications franchise pursuant to the terms and conditions contained herein for the installation, repair, replacement, reconstruction, upgrade, and operation and maintenance of a system within the City limits of Finlayson, Minnesota.



### SECTION 3. CITY'S FEES AND COSTS

The Franchisee shall reimburse the City for all costs of publishing a summary of this franchise ordinance, and the Franchisee shall pay the City's reasonable attorney's fees and engineering fees in connection with the adoption of this ordinance.

### SECTION 4. AUTHORITY FOR USE OF STREETS

A. For the purposes of operating and maintaining a System in the City, the Franchisee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the street within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, as approved by the city, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

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

C. Notwithstanding the above grant to use streets, no street shall be used by the Franchisee if the City determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used.

### SECTION 5 INCORPORATION BY REFERENCE

All terms, provisions, statutes, regulations or documents incorporated by reference are a part of this Franchise.



Such addresses may be changed by either party upon notice to the other party given as provided in this section.

#### SECTION 9. COMPLIANCE WITH STATE AND FEDERAL LAWS.

The Franchisee and the City shall conform to all state laws and rules regarding cable communications within the period required by law and to all federal laws and regulations regarding cable communications, as they become effective.

#### SECTION 10. FRANCHISE TERM.

This Franchise shall have a term of fifteen (15) years effective from written acceptance by the Franchisee.

#### SECTION 11. REVIEW OF FRANCHISE TERMS.

The field of cable communications is rapidly changing and will likely see regulatory, technical, financial, marketing and legal changes during the terms of the franchise period. Accordingly, the following provisions shall apply during the franchise term:

- A. The City and the Franchisee shall hold scheduled review sessions within thirty (30) days of the third anniversary date of the franchise granted hereunder and within thirty (30) days of every third anniversary date thereafter, unless said review sessions are waived by the city or whenever the City and the Franchisee shall so agree. All such review sessions shall be open to the public and shall be announced in the City's official



newspapers at least ten (10) days before each session. At a minimum, one (1) review session shall be held no less than one (1) year prior to the expiration of this Franchise.

B. Special review sessions may be held at any time during the term of the franchise, provided that the City and the Franchisee shall mutually agree on the time, place and the topics to be reviewed. All such review sessions shall be open to the public and shall be announced in the City's official newspapers at least ten (10) days before each session.

\* SECTION 12. FRANCHISE EXCLUSIVITY.

This Franchise is non-exclusive.

\* SECTION 13. SALE OR TRANSFER OF THE FRANCHISE OR STOCK.

Sale or transfer of this Franchise or sale or transfer of stock so as to create a new controlling interest is prohibited except at the approval of the City which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the Franchisee may pledge or mortgage this Franchise to a lending institution, group of investors, or any other person to obtain funds required for the initial construction and completion of the cable system.

SECTION 14. ACCESS TO FINANCIAL RECORDS.

The City is granted the authority to audit the Franchisee's accounting and financial records upon reasonable notice. The Franchisee shall file annually with the City reports of gross subscriber revenues and other information as the City deems appropriate.

SECTION 15. FREE SERVICE TO INSTITUTIONS

Free drops of Basic service will be connected to the following Finlayson locations:

Two (2) public locations designated by the City.



**SECTION 16. RESIDENTIAL SUBSCRIBER CONTRACTS**

The Franchisee will keep on file with the City any monthly subscriber service contract regularly employed by the Franchisee.

**SECTION 17. RATE REGULATION**

The City may regulate the Franchisee's rates and changes to the extent permitted in accordance with applicable local, state and federal laws and regulations.

**SECTION 18. FRANCHISE ADMINISTRATOR**

The City Clerk-Treasurer of Finlayson, Minnesota shall be responsible for the continuing administration of this franchise.

**SECTION 19. INDEMNIFICATION: LIABILITY INSURANCE**

A. The City, its officers, boards, committees, commissions, elected officials, employees, and agents shall not be liable for any loss or damage to any real or personal property of any person, or for any injury to or death of any person, arising out of or in connection with the construction, operation, maintenance, repair, or removal of, or other action or event with respect to the System.

B. The Franchisee shall indemnify and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees, and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of this Franchise, including reasonable attorney's fees, except claims arising out of the City's own programming.



C. In order for the City to assert its rights to be indemnified and held harmless, the City must with respect to each claim:

1. promptly notify the Franchisee in writing of any claim or legal proceeding which gives rise to the such claim or legal proceeding;
2. afford the Franchisee the opportunity to participate in any compromise, settlement or other resolution or disposition of any claim or proceeding; and
3. fully cooperate with reasonable requests of the Franchisee in its participation in, and control, compromise, settlement, or resolution or other disposition of the claim or proceeding.

D. The Franchisee shall maintain in full force and effect, at its own cost and expense, during the term of this Franchise, comprehensive general liability insurance in the minimum amount of \$1,000,000 general liability insurance, with a \$2,000,000 umbrella policy. The insurance shall be with a company acceptable to the City and shall otherwise be in form and substance acceptable to the City. The Franchisee shall file the insurance policy with written evidence of payment of required premiums with the City at the time of acceptance of this Franchise. The above minimum insurance amount may be changed from time to time by the Franchisee as mutually agreed with the City. The Franchisee shall immediately give notice to the City of any threatened or pending litigation affecting this insurance. All insurance policies maintained pursuant to this Franchise shall contain the following endorsement: "It is hereby understood and agreed that this insurance policy may not be canceled nor may a refusal to renew become effective until thirty (30) days after receipt by the City by registered mail, of written notice of the intention to cancel or not to renew." All insurance policies maintained pursuant to this Franchise by the Franchisee shall name the City as an additional insured party.



## SECTION 24. PERMITS

Within ninety (90) days of the granting of the Franchise, the Franchisee shall apply for any necessary permits, licenses, certificates and authorizations. The initial service area will be as set forth in the map attached as Schedule A. The requirement of this provision may be waived by the City only upon occurrence of unforeseen events or acts of God.

This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. In the event of annexation by the City, or as development occurs, any new territory shall become part of the area covered; provided, however, that the Franchisee shall not be required to extend Service beyond its present System boundaries unless there is a minimum of twenty (20) homes per cable mile as measured from the last fiber node or terminating amplifier. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which the group resides. The Franchisee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas.

## \* SECTION 25. AUTHORIZATION TO CONSTRUCT OR REBUILD

The Franchisee shall obtain a permit from the proper municipal authority before commencing construction, reconstruction, or rebuild of the System of any communications system, including the opening or disturbance of any street, sidewalk, driveway or public place. If the Franchisee fails to meet the conditions of the permit, the City, after reasonable notice to the Franchisee, and the Franchisee has had an opportunity to remedy the complaint, can cause the problem to be remedied and the Franchisee shall pay for the actual costs involved.



## SECTION 26 NOTICE OF PROPERTY OWNER REQUIRED

No cable, line, wire, amplifier, converter or other piece of equipment owned by the Franchisee shall be installed by the Franchisee without first providing notice to the owner or his designee of any property involved.

## SECTION 27. WORK PERFORMED BY OTHERS

- A. The Franchisee shall give notice to the City specifying the names and addresses of any other entity, other than the Franchisee, which performs services pursuant to this Franchise, provided, however, that all provisions of this Franchise remain the responsibility of the Franchisee.
- B. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise.

## SECTION 28. COMPLIANCE WITH APPLICABLE CODES

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



## SECTION 29. RELOCATION OF WIRES. ETC.

In the event that a change is made in the grade, width or location of public streets, alleys, avenues, rights-of-way or other public places by authority of the City which shall necessitate the removal of any poles, wires, transmission and distribution lines to conform to the change of grade, the Franchisee shall make necessary changes in its equipment at its own expense within forty-five days (45) of receipt of notice from the City Council or its designated official.

## SECTION 30. REPAIR OF STREETS

Any and all streets which are disturbed or damaged during the construction, operation, maintenance or reconstruction of the System shall be restored to the same condition by the Franchisee at its expense. Franchisee shall obtain prior approval from the City prior to any "open-cutting" of City streets.

## \* SECTION 31. ERECTION OF POLES PROHIBITED

The Franchisee shall not erect, for any reason, any pole on or along any street in an existing aerial utility system without the prior consent of the City. If additional poles in an existing aerial route are required, the Franchisee shall negotiate with the utility for the installation of the needed poles. Any such additional poles shall require the advance written approval of the City. The Franchisee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions. The City shall utilize its best offices to assist in arriving at an equitable pole rental agreement.



## SECTION 32. RESERVATIONS OF STREET RIGHTS

The following reservations in the use or construction of streets shall be complied with by the Franchisee notwithstanding the grant to use streets made by the Franchise:

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

B. The Franchisee shall construct and maintain the System so as not to interfere with other uses of utility company property or public property. The Franchisee shall make use of existing poles and other facilities which may be available to the Franchisee.

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



D. If the City shall make improvements or changes on all or any part of streets, over, under or along which any part of the System has been installed, then and in every case the Franchisee shall, after forty-five (45) days notice from the City or its authorized agents, proceed to alter, change, vacate or remove from the right-of-way or easement any part of the System necessary to conform with such the City improvements or changes without cost whatsoever to the City.

E. All construction or use of streets shall be in conformance to then applicable ordinances of the City.

#### SECTION 33. TRIMMING OF TREES

The Franchisee may cut or trim trees as necessary pursuant to prior notice to the owner of property which is adjacent to the street area in which such tree stands.

#### SECTION 34. STREET VACATION OR ABANDONMENT

In the event any Street shall be vacated by the City or the use thereof discontinued by the Franchisee, during the term of this Franchise, the Franchisee shall forthwith remove its facilities therefrom unless specifically permitted to continue the same, and upon the removal thereof restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as reasonably required by the City. In the event of failure, neglect or refusal of the Franchisee, after forty-five (45) days notice by the City to repair, improve or maintain such street portion, the City may do such work or cause it to be done, and the cost thereof as found and declared by the City shall be paid by the Franchisee as directed by the City and collection may be made by court action or otherwise.



### SECTION 35. TECHNICAL STANDARDS

The rules of the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations are incorporated herein by reference. The results of any tests required by the Federal Communications Commission shall be filed with the City upon request.

### SECTION 36. SPECIAL TESTING

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

### SECTION 37. NON-VOICE RETURN CAPABILITY

The Franchisee shall construct and maintain a System having the technical capacity for non-voice return communications.



## SECTION 38. SUBSCRIBER PRIVACY

No signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewable at the option of the subscriber.

No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type of classification of Class IV cable communications activity planned for the purpose.

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

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



### SECTION 39. SUBSCRIBER COMPLAINTS

All complaints by the City, subscribers, or other citizens regarding the quality of service, equipment malfunctions, billing disputes, and any other matters relative to the cable communications system shall be investigated and resolved by the Franchisee. Franchisee shall respond to consumer complaints within five (5) days of receipt; and Franchisee shall resolve said complaints within thirty (30) days from the date of receipt of said complaint. In the event of numerous or repeated instances of similar subscriber complaints the City Council may choose to hold a public hearing on the subject.

### SECTION 40. REPAIRS AND COMPLAINTS

The Franchisee shall provide to the subscriber a toll-free or collect telephone number for the reception of subscriber complaints and the Franchisee shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. Costs included in making repairs, adjustments and installations shall be borne by the subscriber, unless it is determined that the cable system is at fault.

The Franchisee shall be relieved of its obligation to provide 24 hours response in the event of acts of God including floods, fire and severe storms.

The Franchisee may interrupt system service between 1:00 A.M. and 7:00 A.M. for routine testing, maintenance and minor repairs, without notification. Interruption of service at any other time shall be only for good cause after reasonable notice to subscribers and be for the shortest practical time.



**SECTION 41. OPEN BOOKS AND RECORDS**

The City shall have the right to inspect, upon seventy-two (72) hour notice during normal business hours, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results, record of requests for service and other like materials of The Franchisee which relate to the operation of this Franchise.

**SECTION 42. TERMINATION**

The City shall have the right to terminate and cancel the Franchise and all rights and privileges of the Franchise if the Franchisee violates any provision of the Franchise, attempts to evade any of the provisions of the Franchise, or practices any fraud or deceit upon the City. The City shall provide the Franchisee with a written notice of the cause for termination and its intention to terminate the Franchise and shall allow the Franchisee a minimum of thirty days after service of the notice in which to correct the violation. The Franchisee shall be provided with an opportunity to be heard at a public hearing before the City Council prior to the termination of the Franchise.

**SECTION 43. FORECLOSURE**

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



#### SECTION 44. RECEIVERSHIP

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

- A. Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,
- B. Such receiver or trustee, within such one hundred and twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

#### SECTION 45. ABANDONMENT

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



\* SECTION 46. REMOVAL EQUIPMENT UPON TERMINATION OR FORFEITURE

Upon termination or forfeiture of a Franchise, the Franchisee shall remove its cable, wires and appliances from the streets, alleys and other public places within the Franchise area if the Franchising authority so requests. In the event the Franchisee has not removed the cable, wires and appliances within 120 days of the date of termination or forfeiture, then said property shall be considered forfeited to the City as abandoned; or the City, at its option, shall be allowed to remove the property and be compensated by Franchisee for their costs.

SECTION 47. MUNICIPAL RIGHT TO PURCHASE SYSTEM UPON SALE OF SYSTEM

A. If the Franchise or cable system is offered for sale, the Franchising authority shall have the right to purchase the system at fair market value.

B. Procedures. In the event the City elects to exercise its right to purchase the System as provided in this section, the following shall then apply:

1. The City and the Franchisee shall negotiate all other terms and conditions of the purchase of the System.

2. If the City and the Franchisee cannot agree upon the terms and conditions of the purchase, the City or the Franchisee shall have the right to proceed to arbitration. Arbitration shall commence and proceed according to applicable Minnesota law except as follows:

a. The parties shall, within fifteen (15) days of the decision to proceed to arbitration, appoint one (1) arbitrator each who is experienced and knowledgeable in the purchase and valuation of business property. Arbitrators shall each agree upon the selection of a third arbitrator,



similarly qualified, within fifteen (15) days after appointment of second arbitrator.

b. Within thirty (30) days after appointment of all arbitrators and upon ten (10) days written notice to parties, the arbitrators shall commence a hearing on the terms and conditions of the purchase in dispute.

c. The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debates and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn.

d. The arbitration panel shall be required to determine the purchase price of the system according to the standards established in paragraph 3 below.

e. At the close of the hearings and within thirty (30) days, the arbitrators shall prepare written findings and make a written decision agreed upon by a majority of the arbitrators which shall be served by mail upon the City and the Franchisee.

f. The decision of a majority of the arbitrators shall be binding upon both parties except that the City may, in its sole discretion and without any penalty or cost to the City of any kind, withdraw its offer to purchase within sixty (60) days of receipt of the final decision of a majority of the arbitrators.



\* SECTION 48. PURCHASE UPON TERMINATION OR EXPIRATION OF FRANCHISE

A. The City may, in lawful manner upon the payment of fair valuation, lawfully ascertain, purchase, condemn, acquire, take over and hold the property and plant of the Franchisee in whole or in part in the following circumstances:

1. If such purchase or taking over were at the expiration of the Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

2. In the event the City shall terminate the Franchise pursuant to the provisions of Section 44 of this Franchise it shall reimburse the Franchisee for the fair market value of the system, exclusive of the value attributable to the Franchise itself.

B. In the event of any dispute, the arbitration procedures in Section 49 of this Franchise ordinance shall be followed.

C. The City shall not be required to purchase the system, either at termination or expiration of the franchisee.

SECTION 49. ACCESS CHANNELS

A. The Franchisee shall provide to each of its subscribers who receive some or all of the services offered on the system, reception on at least one specially designated access channel. The specially designated access channel may be used by the general public, local educational authorities and local government on a first-come, first-served, non-discriminatory basis. During those hours that the specially designated access channel is



not being used by the general public, local educational authorities and local government, the Franchisee shall lease time to commercial or noncommercial users on a first-come, first served, non-discriminatory basis if the demand for that time arises. The Franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by the general public, local educational authorities, local government, or commercial or non-commercial users who have leased time. The VHF spectrum (Channels 2-13) must be used for the specially designated access channel.

B. The City shall establish rules for the administration of the specially designated access channel.

#### SECTION 50. FRANCHISE FEE

During the term of this Franchise, the Franchisee shall pay to the City annually an amount equal to three percent (3%) of all Basic Cable Service revenue derived from subscribers within the City of Finlayson within thirty (30) days after December 31 of each year. Service revenue shall not include monies received as installation charges and charges and fees for reconnections, inspections, repairs or modification of any installation.

#### SECTION 51. DISCRIMINATORY PRACTICES PROHIBITED

The Franchisee shall not deny service, deny access, or otherwise discriminate against subscribers, programmers or general citizens on the basis of race, color, religion, national origin, sex or age. The Franchisee shall comply at all times with all other applicable, federal, state and City laws, and all executive and administrative orders relating to nondiscrimination.



**SECTION 52. CABLE TAPPING PROHIBITED**

Neither the Franchisee nor any other person, agency or entity shall tap, or arrange for the tapping, of any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever.

**SECTION 53. RECOURSE AGAINST CITY LIMITED**

The Franchisee's recourse arising out of any provision or requirement of the Franchise or the enforcement of the Franchise shall be limited as provided in 47 U.S.C. § 555a.

**\* SECTION 54. NONENFORCEMENT BY CITY: MODIFICATION**

The Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance. This Franchise may only be modified or amended by a writing signed by the parties hereto.

**SECTION 55. COURT DECISIONS AND SEVERABILITY**

In the event any material provision of this Franchise is held by a court of competent jurisdiction to be invalid or preempted by federal or state laws, rules or regulations, the City and the Franchisee shall enter into good faith negotiations to modify the Franchise to conform with such requirements.



## SECTION 56. INTERNET SERVICES

Notwithstanding anything to the contrary in this franchise, the Franchisee may, but need not, construct and use the system and the authority granted in Section 2 and elsewhere in this Franchise for the purpose of providing access to and use of electronic mail or other communications services, information services and compilations, the "Internet" and "interactive computer services" (as such terms are defined by 47 U.S.C. § 23), and any other similar service, compilation, or electronically accessible data. The provision of these services shall not be subject to the other provisions of this Franchise (including but not limited to those pertaining to any franchise fee) and shall be subject only to compliance with applicable federal and state laws, rules, and regulations and further compliance with the terms of any agreement with the user of such services, which agreement shall be upon such terms and conditions as are agreed to in the sole discretion of the Franchisee and such user. Without limitation of any other right to which the Franchisee is entitled under federal or state law, under this Franchise, or otherwise, and without regard to the venue in which any action is or may be brought, the Franchisee shall be entitled to every protection, immunity, and limitation on liability offered by 47 U.S.C. § 230(b)-(c).

## SECTION 57. GENERAL PROVISION ON RIGHTS AND REMEDIES

A. All rights and remedies specifically given to City or the Franchisee by this Franchise shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the City or the Franchisee at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City or the Franchisee and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time to thereafter any other right or remedy. No delay or omission of the City or the Franchisee in the exercise of any right



or remedy shall impair any such right or remedy, nor shall any such delay or omission be construed to be a waiver of any right or remedy or acquiescence to any default. The exercise of any such right or remedy by the City or the Franchisee shall not release any other party from its obligations or any liability under this Franchise.

B. In addition to all other remedies granted or available to the City and the Franchisee, the City shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, by any other party of any terms or provisions of this Franchise, or to a decree compelling performance by any other party of any term or provision of this Franchise.

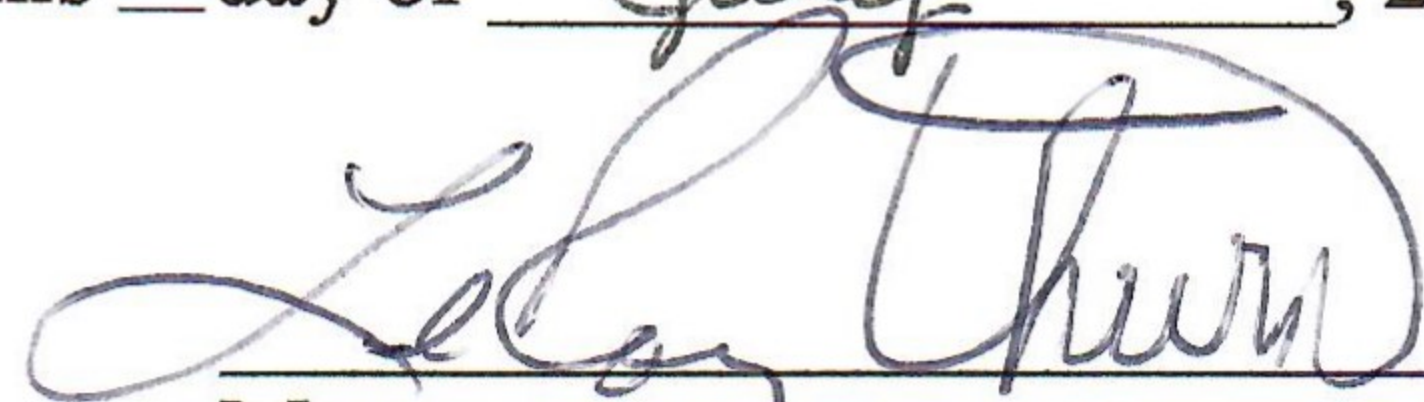
C. The Franchisee agrees that it will not, at any time, set up against the City in any claim or proceeding, any condition or term of this Franchise as unreasonable, arbitrary, void or that the City had not power or authority to make such term or condition, but shall be required to accept the validity of the terms and conditions of this Franchise.

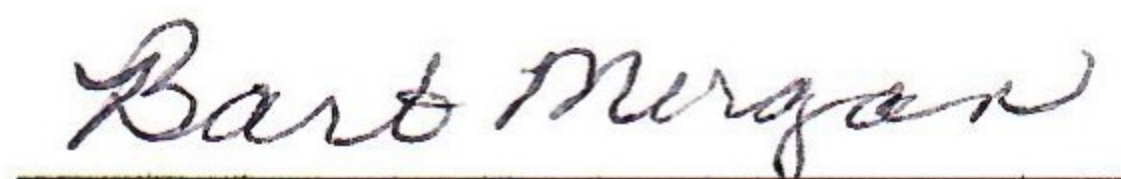
D. In case of any dispute or question as to the meaning, interpretation or application of any term, provision or condition of this Franchise, the City and the Franchisee shall resolve such dispute or question.

E. The City reserves the right to delegate and redelegate from time to time, any of its rights or obligations under this Franchise to any governmental body or governmental organization as determined by the City. Any delegation by the City shall be effective upon written notice by the City to the Franchisee of such delegation. Upon receipt of notice by the Franchisee of the City's delegation, the Franchisee shall be bound by all terms and conditions of the delegation not in conflict with this Franchise. Any such delegation, revocation or redelegation, no matter how often made, shall not be deemed an amendment to this Franchise nor require any consent of the Franchisee.



Passed by the Finlayson City Council this <sup>14<sup>th</sup></sup> day of July, 2003.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk-Treasurer

July 14, 2003  
Date

SAVAGE COMMUNICATIONS,  
A MINNESOTA CORPORATION

By: Ray W. Sam  
\_\_\_\_\_

Its: PRESIDENT  
\_\_\_\_\_  
Title

Effective Date: July 17, 2003  
\_\_\_\_\_