

Memorandum

Administrative Services Department



To: Thomas Thomas, City Manager
Subject: Cable Franchise Settlement Agreement and Renewal
Date: June 14, 2012

The City and Mediacom have been in discussions over the franchise agreement that expired on September 1, 2009.

In November 2007, Azavar Audit Solutions (Azavar) initiated an address audit and franchise fee verification of Mediacom on behalf of the city. The time period covered was from January 1, 2001 through September 30, 2009. The purpose of the audit was to determine the accuracy of the provider's franchise fee collections and remittance to the city. Azavar performed a detailed analysis and determined franchise fee underpayments to the city totaled \$168,108. Mediacom disputed this level of underpayment. However, Mediacom has agreed to an underpayment of \$133,466.46. Azavar has recommended the city accept this offer in complete satisfaction of all claims during the accounting period and to sign the attached settlement agreement.

Azavar (Jason Perry and Dr. Barry Orton) has been assisting the Legal and Administrative Services Department in terms of updating the franchise agreement with applicable law for the construction and maintenance of its cable system. The franchise agreement is for ten years. Mediacom has agreed to provide cable service to buildings outside the 125 feet distance from their transmission lines and will provide a modulator that will help improve video clarity of city council meeting broadcasts. The franchise agreement has been reviewed with city staff and language issues were appropriately addressed by Mediacom.

Recommendation: City Council accepts the settlement agreement (including acceptance of Mediacom's payment of \$133,466.46) and directs the City Manager to sign the agreement. The second recommendation is the City Council accepts the franchise agreement and directs the City Manager to sign the agreement.

Submitted By: John Thorson, Administrative Services Director
Ted Kutsunis, City Attorney

Approved By: Thomas Thomas, City Manager

AGREEMENT

This Agreement (the "Agreement") is made this ____ day of June 2012 by the City of Rock Island, Illinois (the "City") and MCC Illinois, LLC ("Mediacom").

RECITALS

WHEREAS, Mediacom operates a cable system in the City and pays franchise fees ("Fees") pursuant to a Cable Television Franchise Agreement between the City of Rock Island, Illinois and TCI Illinois, Inc. adopted by the City ("Franchise") effective October 1, 1994; and

WHEREAS, the City by Special Ordinance 56-2001 on June 26, 2001 authorized the assignment of the Franchise by TCI Illinois, Inc. to Mediacom and amended that franchise in certain particulars; and

WHEREAS, the City has conducted an audit regarding Fees due the City for the time period beginning January 1, 2001 to September 30, 2009 ("Accounting Period"); and

WHEREAS, Mediacom and the City now desire to conclude, settle, release and discharge once and forever, all rights, claims, causes of actions, liabilities, disputes and demands arising out of or in any way relating to the Fees paid by Mediacom to the City during the Accounting Period ("Claims"); and

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and obligations hereinafter set forth, and for good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement hereto agree as follows:

AGREEMENT

1. AMOUNT

Mediacom shall submit payment to the City in the total amount of One Hundred Thirty-Three Thousand Four Hundred Sixty-Six Dollars and Forty-Six Cents (\$133,466.46) (the "Amount") to settle all Claims. Since Mediacom has already paid the City \$77,784.99, which the City has held in escrow, Mediacom shall submit payment to the City in the additional amount of Fifty-Five Thousand Six Hundred Eighty-One and Forty-Seven Cents (\$55,681.47). It is expressly understood and agreed that the Amount represents full and complete satisfaction and compromise of any and all Claims during the Accounting Period. It is further understood that the Amount shall not constitute "Gross Revenue" in whole or in part as that term is defined in the Franchise.

2. RELEASE

For the consideration set forth in this Agreement, the City does hereby release and forever discharge Mediacom, its parents, subsidiaries, officers, directors, shareholders, employees, predecessors, successors and assigns of and from any and all Claims arising during the Accounting Period. Payment of the Amount shall render moot any and all prior written notifications from the City to Mediacom alleging violation of the Franchise and preclude the assertion of any violations of the franchise by the City against Mediacom during the Accounting Period.

3. VOLUNTARY AGREEMENT

This Agreement is freely and voluntarily given by each party, without any duress or coercion, completely read all of the terms and provisions of this Agreement. It is understood and agreed by the City and Mediacom that nothing herein shall be deemed

to be an admission of liability by Mediacom with respect to the matter of this Agreement.

4. BINDING EFFECT

This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and assigns. The parties for themselves and their respective successors, assigns and legatees agree to join in or execute any instruments and to do any other act or thing necessary or proper to carry into effect this or any part of this Agreement.

5. GOVERNING LAW

This Agreement, and any controversies arising hereunder, shall be interpreted and adjudicated in accordance with the laws of the State of Illinois and venue for any actions brought under this Agreement shall be located in state or federal court within the State of Illinois.

IN WITNESS WHEREOF, the parties have executed this Agreement as their free and voluntary acts and deeds, effective as of the date first above written.

CITY OF ROCK ISLAND, ILLINOIS

By: _____

Mayor

By: _____

City Clerk

MCC Illinois LLC

By: _____

Its _____

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of Rock Island, Illinois (hereinafter, the “City”) and MCC Illinois LLC (hereinafter, “Grantee”), a limited liability company duly organized and validly existing under the laws of the State of Delaware.

The City, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This Agreement is entered into by and between the parties under the authority and shall be governed by the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 *et seq.* (the “Cable Act”), and the Cable and Video Competition Law of 2007 (220 ILCS 5/21-100 *et seq.*)

SECTION 1 – Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 *et seq.* (the “Cable Act”), and the Illinois Cable and Video Competition Law of 2007, as amended from time to time, 220 5/21-100 *et seq.*, unless otherwise defined herein.

“Cable Act” or “Act” means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as the same may be amended from time to time.

“Cable Service” means the one-way transmission to Subscribers of Video Programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

“Cable 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 a community.

“Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television

channel as the term television channel is defined by the Federal Communications Commission by regulation.

“City” means the City of Rock Island, Illinois or the lawful successor, transferee, designee, or assignee thereof.

“Customer” or “Subscriber” means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission.

“FCC” means the Federal Communications Commission or successor governmental entity thereto.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

“Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

“Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

“Grantee” means MCC Illinois LLC the lawful successor, transferee, or assignee thereof.

“Gross Revenue” means the Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees, late fees, Franchise fees, and equipment rental fees. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, advertising sales commissions, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the City.

“Right-of-Way” or “Rights-of-Way” means any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility easements, in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City.

“Right-of-way” or “Rights-of-way” shall not include any real or personal City property that is not specifically described in the previous two sentences and shall not include City

buildings, fixtures and other structures or improvements, regardless of whether they are situated in the right-of-way.

SECTION 2 – Grant of Authority

2.1. The City hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Right-of-Way within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Right-of-Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary by the City for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power.

2.3. Term of Franchise. The term of the Franchise Agreement shall be ten (10) years from and after the Effective Date.

2.4. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall: (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Right-of-Way.

SECTION 3- Construction and Maintenance of the Cable System

All construction and maintenance of the Cable System shall be in accordance with City of Rock Island Ordinances: Chapter 13; Article 3, Division 2 and Appendix C; Article 1, Section 11 *et seq.* [Construction of Utility Facilities in the Right-of-Way] of the City of Rock Island as may be amended from time to time.

SECTION 4 – Service Obligations and Privacy Protections

4.1. Customer Service Obligations. Grantee and the City acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 70/501 *et seq.* Enforcement of such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 70/501 *et seq.*

4.1.1. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile of the existing Cable System’s technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred twenty-five feet (125 feet) of the Grantee’s distribution cable.

4.1.2. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above density and distance standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above and shall be charged to all subscribers that are so served on a pro rata basis.

4.1.3. Grantee shall not deny access to its Cable Service within the City because of the income or minority status of the residents within the City.

4.1.4. Service to School Buildings. Pursuant to 220 ILCS 5/70-501(f), the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to each State accredited K-12 public and private school, not including “home schools,” located in the Franchise Area within one hundred twenty-five (125) feet of the Grantee’s distribution cable.

4.1.5. Service to Governmental Facilities. Pursuant to 220 ILCS 5/70-501(f), the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to each municipal building located in the Franchise Area within one hundred twenty-five (125) feet of Grantee’s distribution cable, and to those municipal buildings at greater distances than 125 feet as specified in Appendix A of this Agreement. “Municipal buildings” are those buildings owned or leased by the City for government purposes, and shall not include buildings owned by the City but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.2. New Developments. Developers of new residential or commercial developments within the Franchise Area are to notify the Grantee of needed underground cable facilities. The Developer shall give the Grantee at least ten (10) business days

written notice of the date of availability of open trenches. Costs of trenching and easements required to bring service to the development shall be borne by the developer unless the Grantee fails to complete the work within the time period contained in the written notice, in which case the installation cost shall be borne by the Grantee.

4.3 Downtown Services. Regardless of the minimum housing density requirements of section 4.1.1, the Grantee shall be required to make service available by July 1, 2013 to all businesses and residents in the area bordered by 1st Avenue, 7th Avenue, 24th Street and 15th Street.

4.4. Burial of Overhead Lines. In those areas where System Facilities are attached to poles or other facilities either owned by the Grantee or another utility service provider, should the utility service provider choose to move their facilities from an overhead installation to an underground installation, the Grantee shall also move its System Facilities from an overhead installation to an underground installation. Said underground installation shall be at the sole cost of the Grantee.

SECTION 5 – Oversight and Regulation by City

5.1. Franchise Fees. The Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due thirty (30) days after the close of each calendar quarter. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any Franchise Fee payments, owed by Grantee in accordance with this Section which are not made on or before the due dates, Grantee shall make such payments including interest at an annual rate of twelve percent (12%) or two (2) percent over prime lending rates as quoted by Chase Bank U.S.A. or its successor, whichever is higher, computed daily from time due until paid. Any undisputed overpayments made by Grantee to the City shall be returned or credited upon discovery of such overpayment and shall be payable within thirty (30) days of the receipt of written notice from Grantee.

5.2. City's Right of Inspection and Audit.

5.2.1. Grantee shall maintain books of account and records adequate to enable Grantee to demonstrate that it is in compliance with the obligation to pay the fees described in Section 5.1 of this Agreement with respect to Cable Service. Grantee shall also maintain books and records to demonstrate Grantee's compliance with all other

terms of this Agreement. Grantee shall not be required to maintain books and records for compliance purposes under this Agreement for a period longer than five (5) years.

5.2.2. The City shall have the right to audit and to recompute any amounts determined to be payable in satisfaction of the fees described in Section 5.1 of this Agreement with respect to Cable Service. Any undisputed additional amount due to the City as a result of the audit shall be paid by Grantee within thirty (30) days after Grantee received a written notice from the City. The notice that the City sends to Grantee shall include a copy of the audit report. If a dispute exists relating to any amount owed, the Parties shall meet to discuss the dispute in detail. Grantee shall have the opportunity to rebut any audit findings and present written objections to City's findings within a reasonable time after receipt of audit findings. Grantee shall pay the cost of the audit if the City determines that the annual payment to the City for the preceding year of fees described in Section 5.1 of this Agreement with respect to Cable Service is thereby increased by more than five percent (5%).

5.2.3. Upon ten (10) days notice to Grantee, the City or its designated independent representative shall have the right to examine books and records directly related to Grantee's compliance with its obligations under this Agreement, including the fees described in Section 5.1 of this Agreement. The City shall have no right to examine any aspect of the books and records that does not directly relate to Grantee's obligations under this Agreement.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the City's representative. In the event that the City has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information that the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request.

SECTION 6 – Assignment or Transfer

6.1. The Grantee shall not be permitted to sell, transfer or otherwise dispose of

the Franchise without the prior written consent of the City, except that transfers to a corporation which merges with the Grantee, acquires substantially all of the assets of the Grantee, owns more than fifty percent (50%) of the stock of which is owned by persons or entitles that own over fifty percent (50%) of this stock of the Grantee, shall not require the consent of the City.

6.2. The consent or approval of the City to any such assignment, lease, transfer, sub-lease, pledge or mortgage shall not constitute a waiver or lease of the rights of the City in and to public right-of-way.

SECTION 7 – Liability, Insurance and Indemnity

7.1. The Grantee hereby agrees to indemnify, defend and save whole and harmless the City and its officers and employees from liabilities and related expenses (including reasonable attorney's fees) of any kind which may arise out of or from the establishment, construction, operation and maintenance of the System or System Facilities or the execution and implementation of this ordinance. The City shall notify the Grantee in the event any person shall in any way notify the City of any claim or demand in connection with the System, the System Facilities or this ordinance from which the Grantee may be subject to liability under this Section or otherwise. The undertaking in connection with the subsection 7.1 includes liabilities or claims of liability with respect to property damage, personal injury, invasion of the right of privacy, defamation of any person, the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, and failure of the Grantee to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee in connection with this ordinance. The Grantee shall have the right to defend, settle, or compromise any claims or demands arising hereunder and the City shall co-operate fully therein. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from the willful misconduct of the City, its officers, employees and agents.

7.2. The Grantee shall keep the System and System Facilities continuously insured against such risks as are customarily insured against by businesses of like size and type, including but not limited to:

7.2.1. Insurance upon the repair or replacement basis if available, and otherwise to the full insurable value of the System Facilities (with reasonable deductible provisions) against loss or damage by fire and lightning, with uniform standard extended coverage endorsement, limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State.

7.2.2. Insurance to the extent of \$1,000,000 per occurrence against liability for bodily injury including death and to the extent of \$500,000 per occurrence against liability for damage to property including loss of use, occurring on, arising out of or in any way related to the System and System Facilities.

7.2.3 During any period of construction, adequate coverage to meet liability under the Illinois Structural Work Act.

7.2.4. Workman's Compensation Insurance within statutory limits and Employer's Liability Insurance of not less than \$100,000.

7.2.5. Comprehensive Automobile Liability Insurance to the extent of \$1,000,000 per occurrence against liability for bodily injury including death and to the extent of \$300,000 per occurrence against liability for damage to property including loss of use occurring on, arising out of, or in any way related to the System.

This subsection 7.2 shall not be limit on the Grantee's undertaking provided in subsection 7.1 of this Section.

7.3. The Grantee shall have the City and its officers and employees included as additional insureds on all insurance policies referred to in this section. The Grantee shall file with the City insurance certificates verifying the required coverage under such policies. All such policies shall provide that the issuing insurance company will not cancel them without thirty (30) days prior written notice to the Grantee and the City. All such policies shall be taken out and maintained with generally recognized responsible insurance companies qualified to do business in the State of Illinois and carrying a rating of A-11 in the most recent publication of Best's Insurance Guide.

SECTION 8 – System Description

8.1. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K.

SECTION 9 – Enforcement of Franchise

9.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the City's written notice: (i) to respond to the City, contesting the assertion of noncompliance or default; or (ii) to cure such default; or (iii) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, in the event the

City determines that the Grantee is in default of any material provision of the Franchise, the City may seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief, or in the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

9.3.1 The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including two or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

9.3.2 At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to any court with jurisdiction after receipt of the City's decision.

9.4. Technical Violation. The City agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

9.4.1. In instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the customers within the Franchise Area; or

9.4.2. Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

SECTION 10 – Access Programming

10.1 Capacity. The Grantee shall provide capacity for the City's noncommercial public, educational and governmental access ("PEG") programming through one Channel (the "Channel") on the Grantee's Cable System. Unless otherwise agreed to by the City and the Grantee to the extent required by applicable law, the Channel may be carried on the Grantee's basic digital service tier. The City's PEG programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time. The Grantee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. However, the PEG channel is, and shall be, operated by the City, and the City may at any time allocate or reallocate the usage of the PEG channel among and between different non-commercial uses and Users.

10.1.1. Grantee shall provide equipment and personnel for live coverage of City Council Meetings and a rebroadcast each week on the Government Access Channel utilizing equipment at least as effective as the upgrades found in Attachment A to Ordinance No. 56-2001 and providing high quality audio and visual coverage of said meetings. Grantee shall be responsible to provide upstream capability, including modulator, that meet the signal quality requirements cited in section 8.1. The modulator currently in service shall be replaced with a new modulator by September 1, 2012.

10.2. Emergency Broadcast. Grantee shall carry all federal, state and local alerts provided over the federal "Emergency Alert System" ("EAS") through Grantee's Cable Service in full compliance with FCC requirements to the extent applicable in the event of a public safety emergency, which at a minimum will include the concurrent rebroadcast of local broadcast channels. Grantee shall comply with the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. Grantee shall, in accordance with FCC or other applicable regulations, cooperate with the City on the use and operation by the City of the EAS and Grantee shall, upon written request, provide to the City's Head of Emergency Administration or comparable City employee with a written copy of the procedures for activating the EAS in the event of weather-related, and non-weather related emergency conditions.

SECTION 11 – Miscellaneous Provisions

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

11.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City: City of Rock Island
 1528 3rd Avenue
 Rock Island, IL 61201
 Attn: City Manager

To the Grantee: MCC Illinois LLC
 Legal & Regulatory Affairs
 100 Crystal Run Road
 Middletown, NY 10941
 Attn: Bruce Gluckman, Vice-President

Copy to: MCC Illinois LLC
 3900 26th Avenue
 Moline, IL 61265
 Attn: LeeAnn Herrera
 Sr. Manager, Government Relations

11.3. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

11.4. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois or Federal law as applicable, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of Illinois and/or federal law, as applicable, with jurisdiction and venue in Rock Island, Illinois.

11.5. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

11.6. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

11.7. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, that the City or Grantee may have under federal or state law unless such waiver is expressly stated herein.

11.8. Validity of Franchise Agreement. The Parties agree, by their acceptance of this Franchise, to accept the validity of the terms and conditions of this Franchise Agreement, in their entirety, and that the Parties shall not, at any time, challenge any provision, term, or condition of this Franchise Agreement as unreasonable, arbitrary, or void, or that the Parties had no power or authority to make such provision, term, or condition as part of, or pursuant to this Franchise Agreement, except as to those matters preempted by federal or state law.

11.9. Performance. The City and the Grantee agree to be bound by, and to timely and fully perform and fulfill all of the terms, condition, and representations of this Franchise Agreement. All provisions of this Franchise Agreement shall be binding upon the parties and their successors, lessees, delegees, or assignees, subject to the terms and conditions set forth herein.

11.10. Successor Franchise Agreement. Upon passage and approval of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to replace all existing franchise agreements, including the prior Franchise, with the Grantee, regardless of whether said franchise agreements are in effect.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For the City of Rock Island

For Medicom

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Assigned Address	Use	Status
1430-24 Street	Utilities Maintenance Offices	Existing Structure
2215-16 Avenue	Water Treatment Plant Offices	Existing Structure
2255-16 Avenue	Filter Building	Existing Structure
630-9 Street	Martin Luther King Center	Existing Structure
100-6 Avenue	Municipal Services Garage	Existing Structure
201-15 Street	Centennial Bridge Office	Existing Structure



Community & Economic Development Department

Monday, August 29, 2011

City of Rock Island
 Public Works Department
 1309 Mill Street
 Rock Island, IL 61201

To All Concerned:

The following addresses are assigned to Parcel No. RI-179-2 as follows:

Assigned Address	Use	Status
1410 24 Street	Utilities Maintenance Garage	Proposed New Construction
1430 24 Street	Utilities Maintenance Offices	Existing Structure
1450 24 Street	Utilities Maintenance Garage	Existing Structure
1506 24 Street	Softball Concession Stand	Under Construction
2215 16 Avenue	Water Treatment Plant Offices	Existing Structure
2255 16 Avenue	Recycling Center Filter Building	Existing Structure
2263 16 Avenue	Storage Building	Existing Structure
2285 16 Avenue	Electrical Services Offices	Existing Structure

Please see a parcel map reflecting the location of the above structures on page 2 of this notification.

Section 304, (F) 304-3 of the International Property Maintenance Code, requires "Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4 inches (102mm) high with a minimum stroke width of 0.5 inches (12.7mm)."

Sincerely,

Thomas G. Ayers
 Chief Building Official

Cc: RICOMM
 POST MASTER
 CITY CLERK
 MIDAMERICAN ENERGY COMPANY
 ASSESSOR'S OFFICE
 AMERITECH - ENGINEERING
 FILE

ENGINEERING DEPARTMENT
 WATER DEPARTMENT
 FIRE DEPARTMENT
 ZONING DEPARTMENT
 PUBLIC WORKS
 INFORMATION SERVICES
 FINANCE DEPARTMENT

Inspection Division
 1528 Third Avenue / Rock Island, Illinois 61201-8678
 Voice (309) 732-2910 TDD (309) 732-2109 FAX (309) 732-2930 www.rigov.org



