

CITY OF COLUMBIA, ILLINOIS

ORDINANCE NO. 2842

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO HTC COMMUNICATIONS CO. FOR A TERM UNTIL JANUARY 31, 2016 SUBJECT TO THE CONDITIONS HEREIN

**Adopted by the
City Council
of the
City of Columbia, Illinois
this 7th day of February, 2011**

**Published in pamphlet form by
authority of the City Council
of the City of Columbia,
Illinois, this 7th day
of February, 2011.**

FEB 07 2011

ORDINANCE NO. 2842


City Clerk

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO HTC COMMUNICATIONS CO. FOR A TERM UNTIL JANUARY 31, 2016 SUBJECT TO THE CONDITIONS HEREIN

WHEREAS, HTC Communications Co. (“HTC” or “Grantee” or “Franchisee” or “Cable Franchisee”) desires to provide “video service,” as such term is defined in 220 ILCS 5/21-201, to residents of the City of Columbia;

WHEREAS, municipalities of the State of Illinois are authorized pursuant to Illinois statute (65 ILCS 5/11-42-11 and 220 ILCS 5/21-301(a)) to franchise cable television or video service providers who do not possess a state-issued authorization under Section 21-401 of the Public Utilities Act (220 ILCS 5/21-401);

WHEREAS, the City has enacted the Communications and Cable Code to lawfully address the requirements of any current or future cable television or video service provider seeking to use the public rights-of-way to provide cable television video service within the City; and

WHEREAS, the City seeks to provide HTC the opportunity to enter into a franchise under the terms attached to this franchise ordinance if it so determines.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City Council has determined that it is reasonable to grant a Cable Television Franchise, attached hereto and incorporated herein by this reference, to HTC for a term until January 31, 2016, effective only upon execution by HTC of the unconditional “Acceptance of City of Columbia Cable Services Franchise” as attached, delivered to the City of Columbia, Illinois City Clerk on or before February 18, 2011 (unless otherwise approved by the City Council), which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the attached Franchise and Acceptance shall constitute a binding and enforceable contract between the City and HTC; PROVIDED, that nothing in this ordinance shall be deemed to authorize operation of cable television or video services within the City prior to such Acceptance; and any operation in the rights-of-way without a valid and binding franchise accepted by Franchisee shall be subject to such penalties and

remedies as set forth in the Communications and Cable Code of the City and as otherwise permitted by law.

Section 3. A copy of the attached Franchise has been delivered to HTC in substantially the form attached hereto not less than seven days prior to this enactment.

Section 4. The City shall, and the officials, agents and employees of the City are hereby authorized and directed to, take such further action, and execute such documents, certificates and instruments as may be necessary to carry out and comply with the intent of this ordinance.

Section 5. This Ordinance shall be in full force and effect on and after its passage and approval as provided by law and this Ordinance shall be published as may be provided by law.

Alderman Roessler moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Hejna, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Row, Hejna, Oberkfell, Stumpf and Roessler.

NAYS: None.

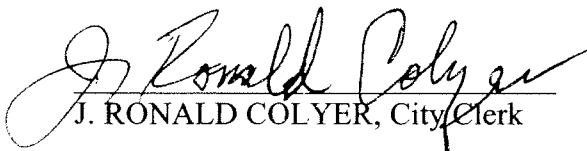
ABSENT: None.

ABSTENTIONS: None.

PASSED by a majority vote of the City Council holding office and APPROVED by the Mayor this 7th day of February, 2011.


KEVIN B. HUTCHINSON, Mayor

ATTEST:


J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF PUBLICATION

I, J. Ronald Colyer, certify that I am the duly elected and acting Municipal Clerk of the City of Columbia, Illinois.

I further certify that on the 7th day of February, 2011, the Corporate Authorities of the City of Columbia, Illinois passed and approved Ordinance No. 2842, entitled:

**“AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE
TO HTC COMMUNICATIONS CO. FOR A TERM UNTIL JANUARY 31,
2016 SUBJECT TO THE CONDITIONS HEREIN”**

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2842, including the ordinance and a cover sheet thereof, was prepared and a copy of such ordinance will be posted in the Columbia City Hall, commencing on the 9th day of Feb., 2011 and continuing for at least ten (10) days thereafter. Copies of such ordinance were also available for public inspection upon request at the office of the City Clerk.

DATED at Columbia, Illinois this 7th day of Feb., 2011.


J. RONALD COLYER, City Clerk

(SEAL)

CITY OF COLUMBIA, ILLINOIS

CABLE TELEVISION SERVICE

FRANCHISE FOR

HTC COMMUNICATIONS CO.

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This Franchise Agreement is between the City of Columbia, Illinois, hereinafter referred to as the “City” or “Grantor,” and HTC COMMUNICATIONS CO., hereinafter referred to as the “Franchisee” or “Cable Franchisee.”

SECTION 1. DEFINITIONS

For the purpose of this Franchise, the terms, phrases, words, abbreviations and their derivations shall have the meaning given to them in the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 through § 573, 65 ILCS 5/11-42-11 through 11.2 of the Illinois Municipal Code, or the Illinois Cable and Video Customer Protection Law of 2007, 220 ILCS 5/22-501 through 503 (Article XXII of the Public Utilities Act), each as amended from time to time (collectively, the “Cable Acts”).

- A. “Affiliate” shall mean any person who owns or controls, is owned or controlled by, or is under common ownership or control with the Franchisee.
- B. “Cable” and “Cable Service” as used in this Franchise shall include “Video” and “Video Service” as defined in 220 ILCS 5/21-201.
- C. “Cable Ordinance” means the “Cable Communications and Service Code” of the City enacted February 5, 2007, Ordinance No. 2527, and amended December 17, 2007, Ordinance 2617. The definitions in the Communications and Cable Services Code are made a part of this Franchise to the extent such definitions are related to the provision of Cable Service or the operation of a Cable System unless contrary to federal law.
- D. “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 television channel is defined by the Federal Communication Commission (“FCC”) by regulation).
- E. “Public Buildings” mean all local unit of government buildings, whether leased or owned by the City, public libraries, and public primary and secondary schools.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant.

HTC Communications Co., a corporation whose ownership is indicated in Exhibit A, is hereby granted a Cable Service Franchise, subject to the terms and conditions of this Franchise Agreement (hereinafter also referred to as the “Franchise”). The grant provides Cable Franchisee the authority, right and privilege, to construct, reconstruct, operate and maintain a Cable System within the Rights-of-Way in the City of Columbia, Illinois, as it is now or may in the future be constituted. To the extent not inconsistent with federal law or state law, if Cable Franchisee desires to use its Cable System or facilities for the provision of Communications Services or other non-Cable services it shall be required to obtain a separate Right-of-Way Use Agreement or franchise.

2.2 Right of City to Grant Franchise.

Cable Franchisee acknowledges and accepts the right of City to grant this Franchise as has been approved by ordinance.

2.3 Term.

The Franchise granted by this Ordinance shall commence upon its Effective Date and shall expire on January 31, 2016 thereafter, unless extended, renewed, revoked or terminated sooner as provided for in this Franchise, and further provided that the City and Franchisee may, but shall not be obligated to, during the term of this Franchise, extend the term for an additional three (3) years upon mutual agreement of the parties and enactment of resolution or ordinance by the City Council. The parties agree that any subsequent renewals of this Franchise may be of a shorter term or longer term.

2.4 Additional Franchises.

This Franchise and any additional franchise granted by the City to any other provider of cable or video services during the term of this franchise shall be subject to section 3.1(C) of the Cable Ordinance.

2.5 Written Notice.

All notices, reports or demands required to be given in writing under this Franchise Agreement shall be deemed to be given when delivered personally to the Person designated below, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to City:

City of Columbia, Illinois
Columbia City Hall
208 South Rapp
Columbia, IL 62236

ATTN: City Administrator
City Attorney

If to Cable Franchisee:

HTC Communications Co.
213 S. Main St.; P.O. Box 149
Waterloo, IL 62298
ATTN: Vice President of Operations

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

2.6 Franchise Not Exclusive.

- A. The Franchise granted herein is not exclusive, and shall not be construed as any limitation upon the right of City, through its proper offices, and in accordance with applicable law, to grant to other Persons or corporations rights, privileges or authority similar to or different from the rights, privileges and authority herein set

forth, in the same or to the Rights-of-Way, that Cable Franchisee is entitled to occupy by this Franchise, permit or otherwise.

- B. The Cable System constructed and maintained by Cable Franchisee or its agents shall not unreasonably interfere with other uses of the Rights-of-Way. Cable Franchisee shall make use of existing poles and other above and below ground facilities available to Cable Franchisee to the extent it is technically and economically feasible and commercially reasonable to do so.
- C. Notwithstanding the above grant to use Rights-of-Way, Cable Franchisee may be restricted from using particular portions of the Rights-of-Way which may be identified by the City if the City determines that such use is inconsistent with the terms, conditions, or provisions by which such specific portions of the Rights-of-Way were created or dedicated, or with the present use of such specific portions of the Rights-of-Way, or the specific terms of the City's Cable Ordinance.

2.7 Binding Contract.

This Franchise (including all of Cable Franchisee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Cable Franchisee, and as such, cannot be amended, modified or changed in any manner whatsoever without the mutual consent of the parties; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its lawful police powers.

2.8 Federal, State, and City Jurisdiction.

- A. This Franchise shall be construed in a manner consistent with all applicable federal and state laws.
- B. In the event that the federal or state government discontinues preemption in any area of cable service over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, Grantor may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers. Unless otherwise specified in the ordinance adopting such regulation, such regulations shall be applicable upon thirty (30) days' prior written notice to Cable Franchisee.
- C. Cable Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Cable Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power.
- D. The provisions of Chapters 1, 3, 4 and 5 of the City's Cable Ordinance, as of the effective date of this Franchise, are hereby incorporated herein by reference as if set out in full, and form part of the terms and conditions of this Franchise, unless otherwise expressly provided for in this Franchise. In the event of any conflict between the terms and conditions of this Franchise and the provisions of the Cable Ordinance, and any amendments thereto, this Franchise shall control; provided that the customer service and privacy standards and protections set forth in Article XXII of the Public Utilities Act and as incorporated and adopted by Subsection 3.4(B) of the City's Cable Ordinance shall control over any contrary provision of this Franchise Agreement; and further provided that nothing herein

shall be deemed to exempt Franchisee from compliance with Chapter 2 of the Cable Ordinance or other applicable regulations not listed herein if Franchisee provides services or takes actions subject to such regulations, if lawfully applicable.

- E. This Franchise shall be construed and enforced in accordance with the substantive laws of the State of Illinois.

2.9 Rights Reserved.

In addition to any rights specifically reserved, Grantor reserves to itself every right and power that is required to be reserved by a provision of any other ordinance or under any other Franchise.

2.10 Franchise Renewal.

Renewal of this Franchise shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. Grantor and Cable Franchisee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.

SECTION 3. GENERAL REQUIREMENTS

3.1 Franchise Fee.

- A. As compensation for this Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of the Cable System, and to defray the costs of City, Cable Franchisee shall pay to the City on a basis throughout the term of this Franchise, a sum totaling five percent (5%) of Cable Franchisee's Gross Revenues. In the event that the applicable law limiting the maximum percentage or scope of services subject to such Franchise Fees changes, the City shall negotiate in good faith with the Franchisee concerning any appropriate change in the amount of Franchise Fees and the timing of any change. Notwithstanding the foregoing, the City may, in its sole discretion, increase the amount of the Franchise Fees and scope of services subject to fees up to the maximum amount and scope permitted under state and federal law, so long as the increase made by law can be passed on to Subscribers. However, the City shall provide the Franchisee with at least thirty-five (35) days' advance notice of such an increase.
- B. Further, Cable Franchisee expressly acknowledges and agrees that if it markets Cable Services with non-cable services, its accounting of revenues for purposes of calculating Cable Franchise Fees shall fairly reflect an appropriate and reasonable division of services among the various services offered. Revenues from the sale of such bundled services shall be apportioned for purposes of this Franchise in such manner that an amount equal to Cable Franchisee's usual and customary charge for Cable Service alone shall be included in "Gross Revenues;" provided, however, if Cable Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Revenues" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or

not Cable Franchisee separates services on a Subscriber's bill, it will provide to the City a summary of the amounts upon which Franchise Fees, if any, may be owed for Cable Services. To assist verification of compliance with this subsection, the Franchisee shall, upon request of the City, provide City on a confidential basis data reflecting any revenue received by Franchisee through or attributable to the System within the City but not included by Franchisee within the definition of Gross Revenues applicable to specifically identified Franchise Fee payment periods.

- C. Payments due Grantor under this Section shall be computed quarterly, for the preceding quarter. Each payment shall be due and payable no later than thirty (30) days after the end of the quarter for which the payment is due. Each payment shall be accompanied by a brief report by Cable Franchisee showing the basis for the computation and a "Franchise Fee Worksheet," as provided in Exhibit B, listing all of the sources of revenues attributable to the operation of Cable Franchisee's Cable System subject to the definition of Gross Revenues. Failure to list or identify revenue on Exhibit B does not relieve Franchisee from the obligation to pay the Franchise Fee on all revenue within the definition of Gross Revenues as required herein.
- D. Should any additional monies be due to the City as a result of information contained in the annual financial report of Cable Franchisee, Cable Franchisee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.
- E. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further sums payable under the provisions of this Franchise. All amounts due from Cable Franchisee pursuant to this Franchise shall be subject to audit pursuant to 65 ILCS 5/11-42-11.05.

3.2 Recovery of Costs and Expenses.

- A. During the term of this Franchise, if the Cable Franchisee initiates a request for approval regarding the transfer of this Franchise or change in control of the Cable Franchisee, as defined by the City's Cable Ordinance, or amendment of this Franchise, the Cable Franchisee or Transferee shall reimburse the City for all reasonable, actual out-of-pocket costs, including attorneys' and consultants' fees and costs, incurred by the City as part of City's reasonable review and processing of Cable Franchisee's or Transferee's request, up to a maximum amount not to exceed \$2,500.00 per request for such approval, or Franchise amendment. Cable Franchisee shall further reimburse the City for such actual costs, up to \$5,000.00, incurred by the City in connection with a renewal of this Franchise. The City shall not include the costs of City staff time. To the extent required by applicable federal law, the Cable Franchisee shall be entitled to offset any such reimbursement against the Franchise Fees paid to the City.
- B. Unless otherwise expressly provided in this Franchise Agreement, all acts that the Franchisee is required to perform under the Cable Ordinance, this Agreement or applicable law shall be performed at the Franchisee's own cost and expense,

without reimbursement by the City. This Subsection, however, does not preclude the Franchisee of any right it may have to pass through Franchise-related costs to Subscribers pursuant to applicable federal law.

3.3 Liability Insurance.

- A. Upon the effective date of this Franchise, the Cable Franchisee shall, at its sole expense, take out and maintain during the life of this Franchise, insurance in full conformity with the requirements of the Cable Ordinance; provided that nothing herein shall be deemed to waive the City's sovereign immunity.
- B. Cable Franchisee shall provide the City Administrator with a certificate of insurance indicating Workers' Compensation coverage and other insurance naming the City as additional insured, prior to operation of the System or use of the rights-of-way pursuant to this Franchise.
- C. The City Administrator reserves the right to adjust the limit coverage requirements proportionately with changes in the Consumer Price Index and/or statutory sovereign immunity limits over the life of the Franchise. Insurance, insurance certificates and evidence of insurance are subject to review of the City for compliance with these requirements.
- D. Cable Franchisee shall submit to the person designated as the City's Risk Manager, documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named.
- E. Any self-insured retention must be declared to the City and approved by the City if in excess of \$100,000.00.

3.4 Indemnification.

- A. Except as otherwise provided herein, Cable Franchisee shall indemnify, hold harmless, release and defend (with mutually acceptable separate counsel) the City, its officers, and employees from and against any and all lawsuits, claims, actions, demands, damages, disability, losses, expenses including reasonable attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any Person or entity, from any cause whatsoever, including Grantor's concurrent negligence, arising out of or in any way connected with the operations, expressly authorized herein, the exercise of the Franchise pursuant to this Franchise, and/or the activities of Cable Franchisee, its subcontractor, employees and agents hereunder. Cable Franchisee shall be solely responsible and save City harmless from all matters relative to payment of Cable Franchisee's employees including compliance with Social Security, withholdings, etc.
- B. This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for Cable Franchisee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise, or the terms, applicability or limitations of any insurance held by Cable Franchisee.
- C. City does not, and shall not, waive any rights against Cable Franchisee which it may have by reason of this indemnification, because of the acceptance by City, or

the deposit with City by Cable Franchisee, of any of the insurance policies described in this Franchise.

- D. This indemnification by Cable Franchisee shall apply to all damages and claims for damages of any kind suffered by reason of any of the operations referred to in this Section, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages. Franchisee shall have no recourse against the City for any loss, cost, expense, claim, liability or damage arising out of the Franchise, this Franchise Agreement or the Cable Ordinance, or the enforcement or non-enforcement by the City of any provision or requirement of this Franchise or the Cable Ordinance, except as otherwise expressly required by federal law; provided that nothing herein shall preclude seeking injunctive or declaratory relief as may be authorized by federal law.
- E. Cable Franchisee shall not be required to indemnify City for damages to the extent arising from or caused by the sole negligence or gross negligence or willful misconduct of the City or its officials, boards, commissions, agents, or employees.
- F. With respect to any claims which are subject to indemnity hereunder, Cable Franchisee shall immediately notify the City's Risk Manager of any such claims which have been filed against the Cable Franchisee or Cable Franchisee and City jointly, and shall provide the City with a copy of the same. Cable Franchisee's obligations hereunder shall be subject to the City giving the Cable Franchisee written notice of its obligation to indemnify the City within seven (7) days of City's receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.
- G. Cable Franchisee shall indemnify, defend (with mutually acceptable separate counsel) and hold harmless the City, its officers, agents and employees against any and all claims or challenges brought against the City by a third-party with respect to the validity of the grant of this Franchise to Cable Franchisee.
- H. The fact that Cable Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Cable Franchisee's duty of defense and indemnification under this Section.

3.5 Security Fund.

- A. Cable Franchisee shall maintain with the City during the term of this Franchise, an irrevocable letter of credit in the sum of twenty-five thousand dollars (\$25,000.00), as a security ("Security Fund") for the faithful performance by it of all the provisions of this Franchise, and in such form as approved by the City Attorney, and compliance with all orders, permits and directions of the City, and the payment by Cable Franchisee of any adjudicated or liquidated claim, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. Interest on the Security Fund, if any, shall accrue to the City as reimbursement for maintenance of such escrows. Provision shall be made to permit the City to draw against the letter of credit from such Security Fund as and to the extent permitted by this Franchise. Cable Franchisee

shall not use such Security Fund for other purposes and shall not assign, pledge or otherwise use the Security Fund as security for any other purpose.

- B. Within thirty (30) days after notice to Cable Franchisee that any amount has been withdrawn by the City from the Security Fund pursuant to this Section, and provided Cable Franchisee has waived or failed to exercise its right to appeal said withdrawal, Cable Franchisee shall deposit a sum of money or take other actions sufficient to restore such Security Fund to its original amount.
- C. Cable Franchisee shall have the right to appeal to the City Council for reimbursement in the event Cable Franchisee believes that the Security Fund was drawn upon improperly. Cable Franchisee shall also have the right of judicial appeal if Cable Franchisee believes the Security Fund has not been properly drawn upon in accordance with this Franchise. Any amounts the City erroneously or wrongfully withdraws from the Security Fund as determined by the judicial appeal shall be returned to Cable Franchisee with interest.
- D. Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of contractors working within the City's Rights-of-Way.
- E. Maintenance of the requisite Security Fund shall not in any way limit the liability of the Cable Franchisee for any failure to fully perform its obligations under this Franchise.

3.6 Procedure for Remedying Franchise Violations.

The procedures for remedying Franchise violations or breaches shall be consistent with the procedures of the Cable Ordinance subject to any other applicable law.

3.7 Compliance with Applicable Laws and Ordinances.

- A. Subject to Section 2.8(D) of this Agreement, Cable Franchisee shall conform to the Cable Ordinance, all generally applicable laws, rules and regulations of the United States, State of Illinois and City in the construction and operation of its Cable System and all generally applicable rules and regulations of the FCC.
- B. Any right, power, protection, privilege or immunity which is provided, granted or imposed on Cable Franchisee under or by virtue of the Cable Acts, as each may be amended or interpreted from time to time after the date hereof, shall remain inviolate and shall be available to Cable Franchisee notwithstanding any contrary provision of this Franchise, and the acceptance of the terms and conditions of this Franchise shall not be construed as a waiver or release by Cable Franchisee or City of any right, power, protection, privilege, immunity or obligation under the Cable Acts, the laws or Constitution of the United States or the laws and Constitution of the State of Illinois.

SECTION 4. SYSTEM CAPABILITIES

4.1 Technical Standards and System Capabilities.

- A. Cable Franchisee's Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in Part 76 of the FCC's Rules and Regulations as may, from

time to time, be amended. The Cable System shall be constructed and maintained during the Franchise in accordance with the density and line extension requirements set forth in Section 4.3 of this Franchise. Cable Franchisee shall comply with all customer service obligations with respect to customers whose premises are passed by portions of the Cable Franchisee's network which are fully activated, tested and available for Cable Service. In constructing and activating its Cable System the Cable Franchisee shall not discriminate between different areas of the City on the basis of race, creed, religion, or income level.

- B. Cable Franchisee shall, at a minimum, retain 750 MHz bandwidth capabilities throughout the term of this Franchise, however, the City recognizes that it may not prohibit, condition, or restrict the Franchisee's Cable System from using any type of subscriber equipment or any transmission technology as set forth under 47 U.S.C. § 544(e).
- C. Cable Franchisee agrees to cooperate with City from time to time in a periodic review, as set forth in 4.2, relating to change in law, technology, and services and agrees to furnish City with information relating to services and technological changes including plans and developments within the industry. Further, upon request, but not more frequently than once every twenty four (24) months, Cable Franchisee agrees to make an update presentation to the City Council regarding, at a minimum, its services and planned developments and changes, industry developments, competition, and other topics reasonably requested to be included in the presentation by the City.

4.2 Periodic Evaluation, Review and Modification.

Grantor and Cable Franchisee acknowledge and agree that the field of cable service is a rapidly changing one that may experience many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, to provide for the maximum degree of flexibility in this Franchise, and to help achieve a continued, advanced and modern Cable System, the following evaluation and review provisions will apply:

- A. The City may request evaluation and review sessions at any time 48 months after the acceptance of the Franchise, and every two (2) years thereafter during the term of this Franchise, and Cable Franchisee shall cooperate in such review and evaluation.
- B. Topics which may be discussed at any evaluation and review session include, but are not limited to, channel capacity, Cable System performance, programming, Internet Service access to the extent permitted by applicable law, PEG access, node capacity, high definition television, local office, technology, trends in industry, changes in the multichannel video market, municipal uses of cable service, Subscriber complaints, judicial rulings, FCC rulings and any other relevant topics that may arise.
- C. During an evaluation and review session, Cable Franchisee shall fully cooperate with the City and shall provide without cost such reasonable information and documents which are in the possession of Cable Franchisee as the City may reasonably request related to Cable Franchisee's compliance with the terms of the Franchise in order to perform the evaluation and review.

D. If at any time during the evaluation and review, the City reasonably determines that substantial competent evidence exists of inadequate technical performance of the Cable System, the City may require Cable Franchisee, at Cable Franchisee's expense, to perform appropriate tests and analyses directed toward such apparent technical inadequacies. In making such request, the City shall describe and identify as specifically as possible the nature of the problem, and shall provide Cable Franchisee with an opportunity to examine the evidence upon which the City has relied in identifying such problem. Cable Franchisee shall cooperate fully with the City in performing such tests and shall report to the City the results of the tests, which shall include at least:

- (1) A description of the problem in Cable System performance which precipitated the special tests;
- (2) The Cable System component tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, by which the Cable System performance problem was resolved; and
- (5) Any other information pertinent to said tests and analyses.

If the Cable Franchisee's actions fail to properly identify and resolve the problem, the Grantor shall have the right to request alternative tests. The cost of said testing shall be borne by Cable Franchisee if the testing reveals the source of the technical difficulty to be within Cable Franchisee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Cable Franchisee's reasonable control, then the cost of said test shall be borne by the City.

E. As a result of an evaluation and review session, Cable Franchisee and the City shall, in good faith, review the terms of any proposed change and any proposed amendment to this Franchise and seek to reach agreement on such change or amendment.

F. The City and Cable Franchisee shall act in good faith to the reasonable requests of the other party for changes in the Cable System or amendment to the Franchise when the change or amendment is not inconsistent with the other terms of the Franchise or with applicable law or regulations, is technically feasible and economically reasonable and will not result in a material alteration of the rights and duties of the parties under the Franchise. The review process contemplated by this Section 4.2 shall not supersede or cause a reopening of the Franchise based on performance violations subject to the procedures for notice, opportunity to cure, and remedying Franchise violations, and is intended for unanticipated events or circumstances not otherwise capable of adequate remedy without Franchise amendment.

4.3 Provision of Cable Service.

A. The Franchisee shall make Cable Service, distributed over the Cable System, available to every resident within the current City limits, existing as of the

commencement date of this Franchise, where there is a minimum density of at least twenty (20) occupied homes per linear strand mile of cable as measured from Franchisee's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request of service and subject to availability of legal access to the location; provided that (1) in any such area that is a platted subdivision that meets the density requirements herein, Franchisee shall extend service not later than 60 days after the request for service to an occupied home within such subdivision, and (2) other extensions that meet the density requirements herein shall occur within a reasonable time, but not later than 120 days after Franchisee has been notified of the request or extension requirement, unless a waiver for good cause is requested from the City and approved by the Council. If such residence is located within one hundred fifty (150) feet of Grantee's feeder cable, the Cable Service will be provided at Grantee's published rate for Standard Installation.

- B. For residential areas annexed within the City limits after the date of this Franchise, Franchisee shall extend its trunk and distribution system to serve households desiring service without any construction charge (other than standard connection charges and drop charges as authorized herein), so long as the area meets the requirements under Section 4.3(A) of this Franchise. Such residential annexed area meeting said requirements shall be served not later than one hundred twenty (120) days after Franchisee has been notified of such request.
- C. If an area does not meet the density requirements herein or in Section 4.3(A) above, the Franchisee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the actual direct capital costs of extending the Cable System. The Franchisee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence.

4.4 Right of Inspection.

Subject to protection of Subscriber privacy, City may inspect all construction, reconstruction or installation work performed by Cable Franchisee under the provisions of the Franchise and its general police powers, to ensure Cable Franchisee's compliance with the Franchise and to protect the public health, safety and welfare of City's citizens. Except in emergency situations, City shall provide Cable Franchisee with reasonable advance notice and Cable Franchisee shall have the right to be present at such inspection.

SECTION 5. SERVICES AND PROGRAMMING

5.1 Programming.

- A. Broad Programming Categories. The City acknowledges that it is Cable Franchisee's sole right to select the programming and services to be offered to Subscribers. This right notwithstanding, Cable Franchisee agrees that it shall provide or enable the provision of at least the following initial broad categories of Programming, unless otherwise required by state or federal law:

- (1) Educational programming;
- (2) News & information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children/family-oriented;
- (6) Arts; culture and performing arts;
- (7) Science/documentary;
- (8) Weather information;
- (9) Government affairs; and
- (10) Business/Financial Programming.

B. Deletion or Reduction of Programming Categories.

(1) Cable Franchisee shall not delete or change the mix, level, or quality of programming and services, or so limit as to effectively eliminate any broad category of Programming identified in Section 5.1.A and within its control;

(2) In the event of a modification proceeding under federal law, the mix, level, and quality of services provided by the Cable Franchisee on the effective date of this Franchise shall be deemed the mix and quality of services required under this Franchise throughout its term.

5.2 Leased Commercial Access.

Franchisee shall make available to the public in a manner consistent with 47 U.S.C. § 532 and associated FCC Rules and Regulations, a Channel or portion of a Channel of the Cable System for commercial use by Persons other than Cable Franchisee, for a fee or charge.

5.3 Supplemental Provisions.

- A. Franchisee shall not be excused from complying with any of the terms, conditions, and provisions of this Franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms, conditions or provisions.
- B. Nothing in this Franchise shall be deemed to release or waive any claim by City against Franchisee relating to payment of franchise fees arising under any prior Franchise and City retains the right to audit and enforce franchise fee obligations under any prior franchise, subject to applicable law.

SECTION 6. SUPPORT FOR LOCAL COMMUNITY CABLE SERVICES RELATED NEEDS

Franchisee will provide public interest service support to the City as set forth herein.

6.1 Institutional Network.

- A. City has identified the public need for an institutional network for public communications and related use as part of the System, but City and Franchisee have been unable to reach agreement on the terms of inclusion of such I-Net as part of this grant of Franchise. Upon the request of the City, Franchisee shall provide a proposal to provide institutional services to public buildings within the City but shall have no obligation to construct or provide such services until the City or such public buildings have contracted with Franchisee to provide services that will allow Franchisee a reasonable return on its investment or pays the actual marginal cost incurred by Franchisee to construct such I-Net. Franchisee agrees to charge the public buildings the lowest competitive prices for hardware and services delivered offered to any Franchisee and as compared to other telecommunications providers.
- B. In the development of the I-Net design, the Franchisee shall assist and coordinate with the City's designated representative for the I-Net to assess equipment needs and requirements necessary to construct, utilize and activate the I-Net. The City shall be responsible for the purchase and maintenance of equipment at its sites and in hub locations serving its sites.
- C. The City shall own all equipment and facilities paid for by the City.
- D. The obligations for provision of the I-Net will convey to all successors and assigns of this Franchise.

6.2 Public, Educational and Governmental Access.

- A. Access Channels. Subject to the provisions of this Section, Cable Franchisee shall offer the following non-commercial access channels to each of its Subscribers who receive all or any part of the cable television programming offered on the Cable System.
 - (1) Local Educational Access – One (1) specifically designated channel for local educational access use to be administered by either the public school district(s) located within the Franchise Area or a higher education channel, at option of City.
 - (2) Government Access – One (1) specifically designated (two-way capable when available elsewhere in the Cable System) channel for government access use by the City ("City Channel"). The City may at its option, utilize this channel for internal departmental training or use; provided that the City shall purchase the required scrambling technology for this use, if the City requires such scrambling. The City also may utilize the City Channel for public access programming at its option. The City may jointly utilize this channel with other jurisdictions served by a common headend of the Cable Franchisee. The government access channel may be combined with the local educational access channel until the City reasonably determines the need for a separate government access channel and provides 90 days written notice thereof to Franchisee. Where a conflict occurs in programming between any governmental and educational programming on

a combined channel, the City shall have control as to resolving such conflict.

- (3) Insertion connection – Franchisee shall provide at no cost to the City local audio\video insertion capability in the Cable System at one location to be designated by the City for purpose of delivering government access programming. Franchisee shall not have to provide such insertion capability beyond the first location designated by the City unless the City agrees to pay the actual costs of provision of such additional insertion capability; provided, however, if the City's primary designated insertion location is relocated by the City, Franchisee agrees to reestablish the insertion point to the new primary location at no cost to the City.
- B. Consistent PEG Programming. Cable Franchisee shall cooperate with other cable providers in the City and the surrounding area to make feeds available to and/or receive feeds from such other cable systems at mutually agreeable locations, where economically and technologically feasible, in order to facilitate the receipt or distribution of programming for the PEG access facilities programming on a local and regional basis.
- C. Administration. Oversight and administration of any access channels in this Franchise, shall be originally carried out by the City, however, at any time after commencement of this Franchise, the City may elect to transfer responsibility to a school district, or upon mutual agreement of the parties to a designated community access corporation (CAC).
- D. Government Access Channel Relocation. If the City's Government Access Channel is relocated by the Franchisee after its initial channel placement, the Franchisee shall reimburse the City up to twenty-five hundred dollars (\$2,500.00) for advertising and promotional materials required due to the access channel's relocation. The Franchisee shall also provide thirty (30) day notice to its customers of any relocation change affecting the City's Government Access Channel but not less than applicable federal law.
- E. Public, Educational and Governmental Access Rules and Procedures. The use of access channels shall be in accordance with and subject to the rules and procedures adopted by the City or City-designated CAC administrator, as authorized under the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 through § 573.
- F. Assistance with Soliciting Contributions. Once every three years, if requested by the City, the Cable Franchisee shall provide its Subscribers with bill stuffers as an access promotion.
- G. Transmission Technology and Technical Quality. Cable Franchisee may utilize any transmission technology or spectrum to provide the above-mentioned access channels. Cable Franchisee shall maintain the access channels at the same level of technical quality and reliability required by the FCC's rules for residential cable television Subscribers.

- H. Proof of Performance Testing. To ensure high quality service on access channels, copies of results of FCC proof of performance testing of the Cable System shall be made available to the City throughout the term of this Franchise upon request.
- I. Change in Technology. In the event the Cable Franchisee changes delivery technology after the City's Government Access Channel is activated and programming is cablecasted over the Cable System, the Cable Franchisee shall provide advance sixty (60) day notification to the City of any change in new technology deployment and shall ensure that such technology does not adversely impact the PEG access channel's signal quality under the technical specifications established under the FCC Rules and Regulations.
- J. Governmental Programming Support. Upon written request and sixty (60) days notice by the City, Franchisee shall provide the City with grants of 10 cents per Subscriber per month within the Franchise Area payable thirty (30) days after each calendar quarter, to be used in the City's discretion but solely for government and educational access equipment, facilities, and other lawful purposes. Franchisee shall also provide the City with an additional one time grant of \$6,000 (upon written request by the City) to be used solely for government and educational access capital costs, or as a capital allowance credit toward I-Net costs or other lawful public purposes. On request, the City shall document such expenditures. Franchisee will work with the City or others so requested by the City to explore alternatives to efficiently expand and better utilize PEG access. Possible enhancements might include cablecasting of City or other governmental meetings and development of new programming on local issues.
- K. Technical Assistance. Franchisee will provide at no cost, technical assistance, including relating to initial setup, in selecting, obtaining and interconnection of equipment for bulletin board or other City channel cablecasting. The Franchisee will provide advice and technical assistance to the City to expand and better utilize governmental access, but not to include routine operation assistance.
- L. Costs and Payments Not Franchise Fees. The parties for purposes of this Agreement agree, except as otherwise provided herein, that any costs to the Franchisee associated with the provision of support for public, educational or governmental capital costs or transmission and interconnection costs pursuant to this Franchise Agreement do not constitute and are not part of a franchise fee, and fall within one or more of the exceptions to 47 U.S.C. § 542. Except as provided herein or in separate agreement of the parties, the Franchisee reserves all other rights under applicable laws to recover from Subscribers via a line item on customers bills the amount of such costs and payments.
- M. Editorial Control. Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the designated access channels (except for Franchisee's own programming cablecast on those channels).

6.3 Drops to Public Buildings and Schools.

- A. Notwithstanding Sections 3.2 (C) of the Cable Ordinance, Cable Franchisee shall provide a free service drop and free basic service to all current and future Public Buildings within the City pursuant to and in accordance with the public benefit

obligation set forth in 220 ILCS 5/22-501(f) of the Cable and Video Customer Protection Law. Cable Franchisee agrees to perform this public benefit obligation by providing installation of at least one (1) cable Drop, and one (1) outlet, and providing monthly Basic Cable Service and Expanded Basic Service, without charge, to all existing and future City Buildings, public library buildings and accredited public, private and parochial schools (K-12) specified by the City in Exhibit C hereto, and as may be amended by City from time to time to include any additional buildings that the System passes or that are within two hundred (200) feet of the Franchisee's existing cable system. The location of such cable Drops and outlets shall be determined in cooperation with the management of the building to which the connection is to be made. Cable Franchisee shall complete construction of the Drop and outlet within one hundred eighty (180) days of the City's request, weather permitting. Drops and outlets that are in addition to the Drop and outlet required by this Section shall be provided by Cable Franchisee at Cable Franchisee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Cable Franchisee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the lowest applicable rate.

- B. All such Cable Service outlets shall not be utilized for commercial purposes and shall not be resold. The City shall take reasonable precautions to prevent any use of the Cable Franchisee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Cable Franchisee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty Franchisee owned equipment.
- C. In instances where the Drop line from the feeder cable to a public, private or parochial accredited school exceeds 200 feet, Cable Franchisee may charge for its Direct Incremental Costs that are incurred in exceeding this length. Cable Franchisee may require advance payment of this cost.
- D. Section 3.2(D) of the Cable Ordinance shall not be applicable to this Franchisee.

6.4 Use of Franchisee's Facilities.

The City may obtain access to Franchisee owned poles and/or conduit in a manner consistent with the City's Cable Ordinance and other applicable law. The City shall pay a pole-attachment or other use charge for such use only to the extent and amount required by law.

6.5 Excess Conduit.

In any instance where the City requires the construction of excess conduit within a designated area as part of a Franchisee's Cable System extension project, City shall pay for the Direct Incremental Cost of such conduit which may be a credit to the Franchise Fees. Such excess conduit shall only be requested under Section 4.11 of the Cable Ordinance after the City has adopted a policy that applies to all applicable users of the Rights-of-Way.

6.6 Construction of Facilities.

In all construction, Franchisee shall faithfully observe any of City's requirements regarding construction, placement and undergrounding of facilities lines, including, but not limited to Sections 4.1 and 4.8 of the Cable Ordinance, to the extent not in conflict with federal law, and shall use existing conduit and communications Facilities in the City where reasonably available instead of disrupting City Right-of-Way with additional construction. No new poles shall be authorized by this Franchise without express consent of the City on showing of cause.

SECTION 7. REGULATION

7.1 Franchise Regulation.

This Franchise shall be subject to regulation by Grantor in accordance with all of the lawful provisions of the Cable Ordinance.

7.2 Force Majeure.

In accordance with the Cable Ordinance, in the event Cable Franchisee's performance of any of the terms, conditions, obligations or requirements of this Franchise or such Cable Ordinance is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Cable Franchisee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, acts of public enemies, emergency orders of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions, or official military authority; civil emergencies and labor unrest or strikes, severe weather, earthquake, flood, tidal wave, hurricane, landslide, lightning, fires, volcanic activity, epidemics, unavailability of equipment or facilities during the initial construction of the Cable System, untimely delivery of equipment, inability of Cable Franchisee to obtain access to an individual's property, and inability of Cable Franchisee to secure all necessary permits to utilize utility poles and conduit so long as Cable Franchisee made all reasonable efforts to ensure that required equipment, parts, components, personnel and proprietary activity were ordered, hired, paid for, scheduled, checked, approved and/or facilitated.

7.3 Severability.

Consistent with the Cable Ordinance, if any material section, sentence, phrase, provision, paragraph or term of this Franchise is held void or otherwise rendered unenforceable by any court of competent jurisdiction, such provision shall be deemed severable from this Franchise, and the remainder of this Franchise shall continue in full force and effect.

7.4 Entire Agreement.

This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations,

possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded by this Franchise.

7.5 Acceptance of Terms.

Cable Franchisee shall have until **February 18, 2011** to file with the City Clerk of the City its acceptance in writing of the provisions, terms and conditions of this Franchise in the form attached as Exhibit D hereto (also referred to in this Franchise as the "Acceptance"), which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Franchise Agreement and acceptance shall constitute a contract between the City and Cable Franchisee subject to the provisions of the laws of the State of Illinois. Cable Franchisee's acceptance shall be deemed to acknowledge that this Franchise is a lawful contract between the City and Franchisee and that Cable Franchisee agrees to the terms hereof voluntarily and with full authority to execute this Franchise.

EXHIBIT A

OWNERSHIP OF
HTC COMMUNICATIONS CO.

See information on file with the City Clerk pursuant to Cable Services Application submitted by Franchisee.

EXHIBIT B

[Note: Chart is for Illustration Purposes Only]

FRANCHISE FEE PAYMENT WORKSHEET

REVENUE SOURCE Included in Gross Revenue	NUMBER OF SUBSCRIBERS	GROSS REVENUE	5% FRANCHISE FEE	YTD
Installation				
Basic/Expanded Basic Service				
Premium Channels				
Pay-Per-View/VOD				
Additional Outlets				
Digital Service				
Equipment				
Guides				
Late Fees				
Advertising				
Home Shopping				
Other				
TOTAL GROSS REVENUE				
System Revenues Not Included in Gross Revenue				
1.				
2.				
3.				
TOTAL EXCLUDED REVENUE				

Cable Franchisee must periodically update the list of Cable Services contained on the Worksheet, and failure to do so will not relieve the Cable Franchisee of the requirement to pay franchise fees on any Cable Services that are actually provided. Specification of specific Revenue Sources in this Worksheet or payment of the Franchise Fee shall not constitute acceptance by the City of the factual or legal classification of such revenue. To the extent such information is marked and actually maintained by Franchisee as "confidential and proprietary," City will maintain such information as a closed record unless otherwise required by law.

EXHIBIT C

CABLE DROPS/CABLE SERVICE PUBLIC LOCATIONS

Columbia High School
77 Veteran's Parkway
Columbia, IL 62236

Immaculate Conception Grade School
321 South Metter
Columbia, IL 62236

Columbia City Hall
208 South Rapp Ave
Columbia, IL 62236

Columbia Public Safety Complex
Police, Fire and Ambulance Department
1020 N. Main Street
Columbia, IL 62236

Columbia Public Library
106. N. Metter
Columbia, IL 62236

Eagleview Elementary School
113 South Rapp Ave
Columbia, IL 62236

Parkview Elementary School
1 Veteran's Parkway
Columbia, IL 62236

Columbia Middle School
100 Eagle Drive
Columbia, IL 62236

Columbia Department of Public Works
110 W. Sand Bank Road
Columbia, IL 62236

EXHIBIT D

ACCEPTANCE OF CITY OF COLUMBIA CABLE SERVICES FRANCHISE

Now, this _____ day of _____, the Franchisee, having been advised by the City of Columbia, Illinois ("City"), that the Mayor and Members of the City Council on the _____ day of _____, 2011, did enact Ordinance No. _____ ("Franchise Ordinance"), wherein a Franchise according to the provisions, terms and conditions of the Cable Ordinance was granted to the Franchisee to establish, construct, operate, and maintain a cable system within the City of Columbia, and as a condition to the grant of such franchise the undersigned does hereby unconditionally and fully accept the terms, conditions and provisions of the franchise, and will fully comply therewith.

FRANCHISEE:

HTC COMMUNICATIONS CO.

By: _____

(SEAL)

Name: _____

Title: _____

ATTEST:

By: _____

STATE OF ILLINOIS)
) ss
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said county and State aforesaid, DO HEREBY CERTIFY that _____ and _____, the _____ and _____ of the Franchisee, personally known to be the same persons whose name(s) are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act and the free and voluntary act of the Franchisee, and that they were fully and duly authorized by the Franchisee to so subscribe, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this _____ day of _____, 2011.

(Seal)

Notary Public