

ORDINANCE NO. 514

An Ordinance Setting Forth Regulations, Terms and Conditions Under Which Cable Communication Systems Shall be Constructed And Operated in the City of Wathena, Kansas; Granting to Carson Communications, L.L.C. a Non-Exclusive Franchise to Construct, Operate and Maintain a Cable Communications System Within the City of Wathena, Kansas; and Repealing City of Wathena Ordinance No. 363 .

The City of Wathena, Kansas, having determined that the financial, legal, and technical ability of Carson Communications, L.L.C. is reasonably sufficient to provide service, facilities, and equipment necessary to meet the future communication needs of the community, does hereby ordain as follows:

SECTION 1
Definition of Terms

1.1 Terms. For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

a. "Access Channels" means those Channels which, by the terms of this Ordinance or the Franchise Agreement, are required to be kept available by the Franchisee for partial or total dedication to non-commercial educational or government access use.

b. "Basic Cable Service" means any service tier that includes the retransmission of local television broadcast signals and Access Channels. This definition shall be consistent with and deemed to change pursuant to any changes in applicable federal law or the FCC rules.

c. "Cable Act" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-61 1)) as amended by the Cable and Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-109, as may, from time to time, be amended.

d. "Cable Television System", "Cable System" or "System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide Cable Service, Communications Services or any other lawful services, including Video Programming, and which is provided to multiple subscribers within the City. Such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves Subscribers without using any public right-of-way- (c) a facility of a common carrier which is subject, in whole or part, to the provisions of 47 U. S. C. § § 201 et. seq., except that such facility shall be considered a Cable System (other than for the purposes of 47 U.S. C. § 541 (C)) to the extent such facility is used in the transmission of Video

Programming directly to Subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility system.

e. "Communications Service" means the transmission of video programming or any other lawful communication service to subscribers.

f. "Basic Communications Service" means the basic or local transmission of video programming or any other lawful communications service to subscribers, including, but not limited to, internet, telephone, interactive digital television and online banking services.

g. "Cable Service" or "Communication Service" means (a) the transmission to Subscribers of (i) Video Programming, (ii) Other Programming Service or (iii) other lawful communication service, and (b) Subscriber interaction, if any, which is required for the selection or use of such Video Programming, Other Programming Service or other lawful communication service.

h. "Channel" or "Cable Channel" means a six MHz portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.

i. "City" means the City of Wathena, Kansas, and all territory within its existing and future territorial corporate limits, or jurisdiction for purposes of this Ordinance.

j. "City Council" means the governing body of the City of Wathena.

k. "Complaint" means any verbal or written inquiry, allegation or assertion made by a person requiring subsequent corrective action to the System or any portion thereof.

l. "FCC" means the Federal Communications Commission, its designee, or any successor thereof.

m. "Franchise" means an initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of the Cable System for the purpose of offering Cable Television Services, Communication Services, or other lawful services to Subscribers. Franchise shall include the Franchise granted pursuant to this Ordinance, any Franchise Agreement or granting Ordinance, and all rights, powers and privileges thereunder.

n. "Franchise Agreement" means any separate agreement or granting Ordinance by which the Franchise is granted to the Franchisee.

o. "Franchisee" or "Grantee" means and includes Carson Communications, L.L.C., and any and all other Persons having any rights, powers, privileges, duties, liabilities, or obligations under this Ordinance and the Franchise Agreement (herein collectively called the "Franchise") or any lawful successor, transferee, or assignee of the original Franchisee.

p. "Franchisor" or "Franchising Authority" means the City of Wathena, as represented by the Council of the City of Wathena or any lawful successor, transferee, or assignee thereof, or delegate acting within the scope of his/her jurisdiction.

q. "Gross Subscriber Revenues" means the monthly Basic Cable Service and Basic Communication Service revenues received by Grantee from Subscribers; provided, however, that such phrase shall not include a) any fees or assessments levied on subscribers or users of the System which are collected by the Grantee for payment to a governmental entity; b) franchise fees paid by the Grantee to the City; c) state or local sales taxes imposed on the Grantee and paid to a governmental entity; d) revenues derived from installation charges; and e) revenues derived from Pay TV.

r. "Installation" means the act of connecting the System from the feeder cable to the Subscriber terminal so that Cable Service or Communication Service may be received by the Subscriber.

s. "Normal Operating Conditions" means those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, Pay TV events, rate increases, and maintenance or upgrade of the System.

t. "Other Programming Service" means information that a Franchisee makes available to all Subscribers generally.

u. "Pay TV" means those cable services that are provided to Subscribers as single-channel tiers by the cable operator and individual programs transmitted to Subscribers for a separate fee or charge from Basic Cable Service.

v. "Person" means any natural Person or any association, firm, individual partnership, joint stock company, joint venture, corporation, or other legally recognized entity, public or private, whether for profit or not for profit.

w. "Public Way" or "Streets" means the surface of and the space above and below, each of the following which have been dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the City shall permit to be included within the definition of Public Way or Streets from time to time.

x. "School" means all elementary and secondary education buildings of Unified School District No. 406 within the territory of the City of Wathena.

y. "Service Area" means the entire geographic area within the City of Wathena as it is now constituted or may in the future be constituted, unless otherwise specified in the Franchise Agreement.

z. "Service Interruption" means the loss of picture, sound or other communication service on one or more channels of the receiving unit of the Subscriber.

aa. "Service Tier" means a category of Communications Service or other services provided by the Franchisee and for which a separate fee or charge is made by the Franchisee.

bb. "Subscriber" means any Person or user of the Cable System who lawfully receives Communications Services or other service therefrom with Franchisee's express permission.

cc. "Subscriber Service Drop" means the extension wiring from the Franchisee's distribution lines to a Subscriber's building.

dd. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2

Franchises: Applications and Criteria for Grant

2.1 Franchise to Operate Required. It shall be unlawful to operate a cable television system within the City unless a valid franchise has first been obtained from the Franchising Authority pursuant to the terms of this Ordinance. A franchise granted pursuant to this Ordinance shall authorize the Grantee to provide cable television services within the City and to charge subscribers for such services. It shall also authorize and permit the Grantee to traverse any portion of the City in order to provide service outside the City. Unless otherwise specified, the Franchise Area shall be the legal boundaries of the City.

2.2 Application Procedures and Criteria. An application for a new cable television franchise shall be submitted to the Franchising Authority in a form specified by or acceptable to the City, and in accordance with procedures and schedules established by the Franchising Authority. The Franchising Authority may request such facts and information as it deems appropriate.

(a) Any applicant shall furnish to the Franchising Authority a map of suitable scale, showing all roads and public buildings, which indicates the areas to be served and the proposed dates of commencement of service for each area. The proposed service area shall be subject to approval by the Franchising Authority. If approved, the service area shall be incorporated into any franchise granted pursuant to this Ordinance. If no service area is specifically delineated in a franchise, it shall be considered to be coterminous with the boundaries of the City.

(b) After receiving an application for a franchise, the Franchising Authority shall examine the legal, financial, technical and character qualifications of the applicant. The

Franchising Authority may grant one or more non-exclusive franchises creating a right to construct and operate a cable television system within the public ways of the City, subject to the provisions of this Section.

(c) In the event an application is filed proposing to serve a franchise area which overlaps, in whole or in part, an existing Grantee's franchise area, a copy of such application shall be served upon any existing Grantee by the City by registered or certified mail. Such notice shall be considered a condition precedent to consideration of the application for a franchise by the Franchising Authority.

2.3 Competing or Overlapping Franchises. Any franchise granted by the Franchising Authority shall be non-exclusive. However, while the Franchising Authority may grant more than one franchise, nothing in this Ordinance shall be construed to require it to grant more than one franchise if the Franchising Authority determines pursuant to the procedures established in this Section that granting additional franchises would be detrimental to the public interest.

(a) If one or more competing or overlapping franchises are granted, the Franchising Authority shall not grant such a franchise on terms or conditions which are either more favorable or less burdensome than those granted under any existing franchise or ordinance. Any franchise which may be granted shall require the new Grantee to provide cable service to the entire franchise area then served by the existing Grantee. Moreover, an existing Grantee may, at its discretion, comply with the most favorable terms contained in any subsequent franchise granted by the Franchising Authority.

(b) Since competing or overlapping franchises may have an adverse impact on the public rights-of-way, on the quality and availability of communications services to the public and may adversely affect the existing operator's ability to continue to provide the services and facilities it is presently providing under this Ordinance, the Franchising Authority may issue a franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional franchise may have on the community. In considering whether to grant one or more additional franchises, the Franchising Authority shall specifically consider, and address in a written report, the following issues:

(1) The positive and/or negative impact of an additional franchise on the community.

(2) The ability and willingness of the specific applicant in question to provide cable television service to the entire franchise area which is served by the existing cable operator. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on equal terms and conditions so as not to give a competitive advantage to one Grantee over another.

(3) The amount of time it will take the applicant to complete construction of the proposed system and activate service in the entire franchise area; and, whether the applicant can complete construction and activation of its system in a timely manner.

(4) The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain and operate the proposed cable TV system for the duration of the franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the Franchising Authority may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit or other documentation to demonstrate to the Franchising Authority's satisfaction that the requisite funds to construct and operate the proposed system are available.

(5) The quality and technical reliability of the proposed system, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such system.

(6) The experience of the applicant in the erection, maintenance and operation of a cable television system.

(7) The capacity of the public rights-of-way to accommodate one or more additional cable systems and the potential disruption of those public rights-of-way and private property that may occur if one or more additional franchises are granted.

(8) The disruption of existing cable television service and the potential that the proposed franchise would adversely affect the residents of the City.

(9) The likelihood and ability of the applicant to continue to provide competing cable television service to subscribers within the entire franchise area for the duration of the franchise.

(10) Such other information as the Franchising Authority may deem appropriate to be considered prior to granting any competing or overlapping franchise.

2.4 Permits for Non-Franchised Entities. The Franchising Authority may issue a license, easement or other permit to a person other than the Grantee to permit that person to traverse any portion of the Grantee's franchise area within the City in order to provide service outside, but not within the City. Such license or easement, absent a grant of a franchise in accordance with this Ordinance, shall not authorize nor permit said person to provide cable television service of any type to any home or place of business within the City nor render any other service within the City.

2.5 Favored Nations. In the event the Franchising Authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Grantee to enter into the Franchising Authority's streets and public ways for the purpose of providing Basic Cable Service or Basic Communications Service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

SECTION 3
Grant of Franchise

3.1 **Franchise Granted Under this Ordinance.** Pursuant to the terms of this Ordinance, a franchise is hereby granted to Grantee to operate and maintain a cable television system in the City for a period of ten (10) years commencing on the Effective Date of this Ordinance. Grantee shall have the option to renew this franchise for an additional term of five (5) years, provided that it is in substantial compliance with the material terms of this Ordinance at the time of its expiration.

SECTION 4
Standards of Service

4.1 **Educational and Governmental Access.**

A. **Local Organization.** The Franchisee will work with the city and schools to help create a local access channel to be used for educational and governmental programming.

B. **Access Channel.** Upon completion of the system upgrade, and upon the willingness of the city and/or local school to operate a local access channel, the Franchisee shall designate one 6-MHz channel of the System for use as the local Access Channel.

C. **Operations.** Franchisee or its agent will act as a programmer. The programmer will provide programming of a local nature on the System. The "Broadcast Day" will consist of eighteen (18) hours. Out of the eighteen (18) hours, ten (10%) percent of that time will be available for educational type programming, and an additional ten (10%) percent for local government, civic clubs, local churches and other community type programming as determined by City.

D. **Equipment.** The Franchisee or its agent will be responsible for providing the character generator and processing equipment, to be located at the System headend, necessary to provide the Access Channel to its subscribers. In addition, the Franchisee is responsible for the return distribution system necessary to receive data from the city and school. The school and/or City will provide equipment necessary to access the processor (i.e., a modem to access the character generator to change information shown on the channel, a video device through a modulator via the return line to override the character generator). Each party will provide such equipment at their own cost and each will be solely responsible for the maintenance, repair, and replacement of such equipment.

4.2 **Conditions of Street Occupancy.** All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and

with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

4.3 Restoration of Public Ways. If during the course of Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

4.4 Relocation at Request of Franchising Authority. Upon its receipt of reasonable advance notice, not to be less than thirty (30) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

4.5 Relocation at Request of Third Party. The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

4.6 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment.

4.7 Safety Requirements. Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

4.8 Aerial and Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the public utilities are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground, provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the public utilities are both aerial and underground, Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerial or underground. Nothing contained in this Section 4.8 shall require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps,

line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section 4.8, in the event that all of the transmission or distribution facilities of the public utilities are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

4.9 Required Extensions of Service. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least ten (10) Subscribers within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under Section 4.10 of this Ordinance.

4.10 Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than ten (10) Subscribers per 1320 cablebearing strand feet of trunk or distribution cable, Communications Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Communications Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1320 cable-bearing strand feet of its trunk or distribution cable, and whose denominator equals ten (10) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

4.11 Service to Public Buildings. The Grantee shall provide without charge one (1) outlet of Basic Service to the Franchising Authority's city office, fire station, police station and public schools that are passed by its Cable System. The outlets of Basic Service shall not be used to distribute or sell Communications Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this Section 4.11, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition, or market development of the Cable System to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such

drop line in excess of 150 cable feet. In the event that additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may also be required to pay the service fees associated with the provision of Basic Service and the additional outlets relating thereto.

SECTION 5 **Regulation by Franchising Authority**

5.1 Franchise Fee. (A) The Grantee shall pay a franchise fee to compensate the City for all costs associated with administering and regulating the cable system. The amount of the franchise fee shall be three percent (3%) of the Grantee's Gross Subscriber Revenues, as defined herein. Such fee shall be paid on an annual basis on or before January 31 of each succeeding year. The City shall be furnished with a statement for each payment, certified as correct by the franchisee, reflecting the total amount of gross revenues and the above charges and computations for the preceding year. Grantee shall be entitled to list the franchise fee as a separate line item on monthly bills.

5.2 Reporting and Auditing of Fee Payments. At the Franchising Authority's request, the Grantee shall file a report showing Grantee's Gross Subscriber Revenues for the calendar year and the amount of franchise fees due to the City. Such reports may be requested once per calendar year. The Grantee shall have an obligation to maintain financial records of its Gross Subscriber Revenues and Grantee fee payments for audit purposes for a period of three years, and the Franchising Authority shall have the right to audit the Grantee's books at the offices where such books are maintained.

5.3 Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by the Grantee is due. Unless within five (5) years from and after said payment due date the Franchising Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred and the Franchising Authority shall be estopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies.

5.4 Rates and Charges. The Franchising Authority may not regulate the rates for the provision of Communications Service and other services, including, but not limited to, ancillary charges relating thereto, except as expressly provided herein and except as authorized pursuant to federal and state law including, but not limited to, the 1984 Cable Act, the 1992 Cable Act, the 1996 Telecommunications Act and FCC Rules and Regulations relating thereto. From time to time, and at any time, Grantee has the right to modify its rates and charges, at its discretion and without consent of the Franchising Authority, including, but not limited to, the implementation of additional charges and rates; provided, however, that Grantee shall give notice to the Franchising Authority of any such modifications or additional charges thirty (30) days prior to the effective date thereof

5.5 Customer Service and Consumer Protection

a. Office Location and Telephone Service Grantee shall maintain an office in sufficient proximity to the City to permit Grantee's customer service and technical personnel to promptly respond to all customer service requests or technical problems which may arise, as further described below. Grantee shall maintain telephone answering service or an answering machine to receive service calls twenty-four (24) hours per day, A listed local telephone number or toll free (800) number shall be made available to subscribers for service calls. Corrective action shall be completed as promptly as practical. The Grantee will make available to the subscribers scheduled service and installation appointments Monday through Friday.

b. In establishing response time to service or repair calls, the Grantee may differentiate between service problems unique to a single household as compared to problems caused by a service outage which affects a large number of subscribers ("area outage"). An area outage is defined as an outage of all cable channels in 4 or more residences in the same neighborhood or area which is caused by a problem with the cable system, rather than being caused by the subscriber or by a cause beyond the Grantee's control, such as a loss of power from the local electric company.

c. All area outages shall be responded to as soon as possible after notification on a 24 hours, 7 day a week basis. Designated technicians shall be on call 24 hours a day to respond when notified by Grantee or an answering service employee. Technicians are expected to repair the problem found and have the system operational as soon as possible. Except for circumstances beyond the Grantee's control such as acts of God, weather, wars, riots and civil disturbances, the Grantee shall be capable of locating and correcting system malfunctions promptly.

d. Protection of Privacy. The Grantee and the Franchising Authority will constantly guard against possible abuses of the right of privacy or other rights of any subscriber or person. In particular, the Grantee shall comply with the provisions of the Cable Communications Policy Act of 1984, 47 U.S.C. 551, as may be amended from time to time.

5.6 Renewal of Franchise. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the 1984 Cable Act (as such existed as of the effective date of the 1984 Cable Act), unless the procedures and substantive provisions set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify Grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as, the past performance of Grantee under the then current Franchise term. The Franchising Authority further agrees that such a preliminary assessment shall be provided to the Grantee prior to the time that the four (4) month period referred to in Subsection (c) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this Section 5.7, the Grantee and Franchising Authority agree that at any

time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the 1984 Cable Act.

5.7 Conditions of Sale. Except the extent expressly required by federal or state law, if a renewal or extension of Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern.

Grantee and Franchising Authority agree that in the case of a lawful revocation of the Franchise, at Grantee's request, which shall be made in its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Franchising Authority further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, Grantee is unsuccessful in procuring qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, Grantee and Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Grantee's continued operation of its Cable System during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of any rights of either the Franchising Authority or the Grantee. Notwithstanding anything to the contrary set forth in Section 5.8, neither Franchising Authority nor Grantee shall be required to violate federal or state law.

5.8 Transfer of Franchise. Grantee's right, title or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an Affiliate, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. Grantee shall give the Franchising Authority at least thirty (30) days notice of any such proposed assignment, sale or transfer. If Grantee does not receive written notice of the Franchising Authority's objection to such assignment within thirty (30) days of receipt of notice of said proposed assignment, sale or transfer, the Franchising Authority's consent shall be deemed to have been given. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

SECTION 6 **Compliance and Monitoring**

6.1 Books and Records. The Grantee agrees that the Franchising Authority may review such of its books and records, during normal business hours and on a non-disruptive

basis, as is reasonably necessary to monitor compliance with the terms hereof Such records shall include, but not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by Grantee to it as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof

6.2 Periodic Evaluation Review and Modification. City and Franchisee acknowledge that the field of cable television is a relatively new and rapidly changing one which may see many regulatory, technical, financial, marketing, and legal changes during the term of this Franchise Agreement. Therefore, to provide for the maximum degree of flexibility in this Franchise Agreement 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 during the term of this Franchise Agreement and Franchisee shall cooperate in such review and evaluation, provided, however, there shall not be more than one (1) evaluation and review session during any two (2)-year period unless mutually agreed to.

(b) Topics which may be discussed at any evaluation and review session include, but are not limited to, rates, channel capacity, System performance, programming, Access Channels and equipment, municipal uses of cable, Subscriber complaints, judicial rulings, FCC rulings, and any other topics the City or Franchisee may deem relevant.

(c) During an evaluation and review session, Franchisee shall fully cooperate with the City and shall provide without cost such reasonable information and documents concerning the Cable System as the City may request to perform the evaluation and review.

(d) If at any time during the evaluation and review the City reasonably believes there is evidence of inadequate technical performance of the Cable System, the City may require Franchisee, at Franchisee's expense to perform appropriate tests and analysis directed toward such suspected technical inadequacies. In making such request the City shall describe and identify as specifically as possible the nature of the problem and the type of test the City believes to be appropriate. Franchisee shall cooperate fully with the City in performing such tests and, within 30 days of completion, shall report to the City the results of the tests, which shall include at least:

- (1) a description of the problem in the System performance which precipitated the special tests;
- (2) the System component tested;
- (3) the equipment used and procedures employed in testing;

(4) the method, if any, by which the System performance problem was resolved;

(5) any other information pertinent to said tests and analyses.

(e) As a result of an evaluation and review session, the City or Franchisee may determine that a change in the System or in the terms of the Franchise Agreement may be appropriate. In that event, either the City or the Franchisee may propose modifications to the System or the Franchise Agreement. Franchisee and the City shall, in good faith, review the terms of the proposed change and any proposed amendment to this Franchise Agreement and seek to reach agreement on such change or amendment, when the change or amendment is not inconsistent with the terms of the Franchise Agreement or with applicable law or regulations and the change or amendment is technically feasible, economically reasonable, and will not result in a material alteration of the rights and duties of the parties under this Franchise Agreement.

(f) Franchisee's general manager or its designated representative is expected to attend all scheduled performance review/evaluation meetings of the City. Franchisee shall notify the City if a representative of Franchisee is unable to attend such a meeting.

(g) It is the intent of this Section to provide an overall review and evaluation of various topics related to Cable Service.

SECTION 7

Insurance, Indemnification, and Bonds or Other Surety

7.1 **Insurance Requirements.** Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage. Said insurance shall designate the Franchising Authority as an additional insured.

7.2 **Indemnification.** The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorneys' fees and costs.

7.3 **Liability Insurance.**

A. As of the effective date of this Franchise Agreement, the Franchisee shall, at its sole expense, maintain during the entire term of this Franchise public liability insurance with a Company licensed to do business in the State of Kansas with a rating by Best of not less than "A-" that shall protect the Franchisee, the Franchisor, and the franchisor's officials, officers, employees and agents from claims which may arise from operations under this Agreement, whether such operations are by the Franchisee, its officials, officers, directors, employees and

agents, or any subcontractors of Franchisee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, and damage to property resulting from the Franchisee's automobiles, products, and completed operations. The amount of such insurance shall be not less than the following:

- (a) General liability insurance:
 - Bodily injury per Person \$500,000
 - Bodily injury per occurrence \$500,000
 - Property damage per occurrence \$500,000
 - Property damage and bodily injury, aggregate \$1,000,000

- (b) Automobile insurance:
 - Bodily injury per Person \$1,000,000
 - Bodily injury per occurrence \$1,000,000
 - Property damage per occurrence \$1,000,000

B. The liability policy shall provide for the following, by endorsement or otherwise:

- (1) The policy shall cover Personal Injury as well as Bodily Injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad Form property damage liability shall be afforded.
- (4) The City shall be included as an additional insured on the policy.
- (5) The coverage is primary insurance and no other insurance or fund of the City will be called upon to contribute to a loss under this coverage.
- (6) Standard form of cross-liability shall be afforded.
- (7) The policy shall not be canceled without 30 days prior written notice of such cancellation given to the City.

C. The City reserves the right to adjust the limit coverage requirements no more than every five years. Any such adjustment by the City will be no greater than the increase in the State of Kansas Consumer Price Index for such five-year period.

D. Franchisee shall submit to the City documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

E. Any deductible or self-insured retention must be declared to the City.

F. Franchisee shall have insurance coverage sufficient to cover any claim in the event that Franchisee sells or transfers the system, or in the event of termination or revocation of this Franchise.

G. It shall be the Obligation of the Franchisee to notify the City promptly of any pending or threatened litigation likely to negatively impact its ability to provide the insurance coverage required herein.

7.4 Workers Compensation. The Franchisee shall obtain and maintain workers' compensation insurance for all franchisee's employees, and in case any work is sublet, Franchisee shall require any subcontractor similarly to provide Workers' Compensation Insurance for all subcontractor's employees, in compliance with state laws, and to fully protect the Franchisor from any and all claims arising out of work-related occurrences. Franchisee hereby indemnities Franchisor for any damage resulting to it from failure of either Franchisee or any subcontractor to obtain and maintain such insurance. Franchisee shall provide the Franchisor with a Certificate of Insurance indicating workers' compensation insurance prior to operations under this Franchise and the commencement of any construction, System Upgrade, reconstruction, or maintenance of the System.

7.5 Bonds and Other Surety. Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial, and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Communications Services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. The Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the Grantee's legal, financial, or technical qualifications that would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

SECTION 8 **System Improvements**

8.1 System Upgrade. Grantee agrees to upgrade and rebuild the CATV system in the City of Wathena within two (2) years of the Effective Date of this Franchise Ordinance. The rebuilt system will be initially activated with sufficient bandwidth to deliver up to the equivalent

of 60 plus standard channels to the subscriber drop and will include technical capability to offer Pay TV services and FM or other audio service.

SECTION 9
Franchise Violations, Procedures, Notice and Cure

9.1 Procedures in the Event of Alleged Violations. A Grantee may be penalized by the Franchising Authority in the event of a substantial violation or breach of a material provision of this Ordinance. If the Franchising Authority believes that such a breach has occurred and that there is sufficient cause to penalize the Grantee, the following procedures shall be followed:

9.2 Notice, Response and Opportunity to Cure Alleged Violations.

(a) The Franchising Authority shall notify the Grantee in writing of any alleged violation or failure to meet any of the terms or provisions of this Ordinance. The Grantee shall be given thirty (30) days from the date of receipt of such notice to respond in writing, stating its explanation for the alleged violations and what actions, if any, have been or are being taken to cure the alleged violation or lack of compliance.

(b) Upon receipt of the Grantee's response, the Franchising Authority may accept the Grantee's explanation and/or remedy proposed. Alternatively, if the Franchising Authority does not accept the Grantee's explanation or believes that a violation will not be properly cured within a reasonable period of time from the date of the original notice of violation, the Franchising Authority may send to the Grantee a notice of its intent to penalize the Grantee.

(c) Prior to issuing a notice of intent to penalize the Grantee, the Franchising Authority shall hold a public hearing providing due process at which testimony and evidence shall be taken concerning the alleged violation. Representatives of the City and the Grantee shall be permitted to address the subject of the alleged violation(s) and related issues at the public hearing. The Grantee may submit evidence to the Franchising Authority that it is diligently pursuing reasonable actions to cure the alleged violation. If the Grantee shows that there are circumstances beyond its control ("force majeure") which prevent it from immediately curing an alleged violation, such a showing shall be considered sufficient to relieve the Grantee from being penalized for an alleged violation or breach of this Ordinance. The Franchising Authority may require the Grantee to provide periodic reports on progress being made to cure any unresolved problem.

(d) If, following a public hearing, the Franchising Authority believes that the Grantee has violated this Ordinance, the Franchising Authority may issue a notice of intent to penalize the Grantee.

(e) The Grantee shall be given a period of sixty (60) days from the date of the issuance of the notice to cure any alleged violation of this Ordinance. If the alleged violation is not cured within the specified sixty (60) day period, the Franchising Authority may take the appropriate steps necessary to penalize the Grantee. Provided, however, that nothing in this

Section shall be construed to limit or restrict the Grantee's right to appeal the City's actions in state or federal judicial or administrative forum.

9.3 Franchise Termination and Continuity of Service.

(a) In the event that the Franchising Authority denies renewal or revokes a franchise, which denial or revocation is upheld by a final judicial determination if appealed, the Grantee shall be afforded a period of one (1) year from the effective date of the denial or revocation or final judicial order upholding denial or renewal or revocation of the franchise, if appealed, within which to transfer or convey the assets of the cable system. Approval of such a transfer shall not be unreasonably withheld.

(b) In the event the franchise is terminated, whether by revocation, expiration, or otherwise, the Grantee may continue to operate the cable system pursuant to the terms and conditions of the terminated franchise, until the happening of one of the following:

(1) In the case of expiration, a new franchise or an extension of the expired franchise is granted.

(2) In the case of a revocation or a denial of renewal, a final judicial adjudication has been made, including any appeal which has resulted in a finding or order that the Franchising Authority's denial of renewal or revocation is upheld and the Grantee is not entitled to reinstatement, renewal or extension of the franchise and is not otherwise entitled to continue to operate the cable system.

(3) The passage of six (6) months from the time the Franchising Authority has denied renewal or revoked the franchise with no appeal being filed by the Grantee.

9.4 Force Majeure. In the event the Grantee is prevented or delayed in the performance of any of its obligations under this Ordinance by reason of flood, fires, hurricanes, tornadoes, earthquakes or other acts of God, unavoidable casualty, insurrections, war, riot, sabotage, unavailability of materials or supplies, vandalism, strikes, boycotts, lockouts, labor disputes, shortage of labor, unusually severe weather conditions, acts or omissions or delays by utility companies upon whom Grantee is dependent for pole attachments or easement use, or any other event which is beyond the reasonable control of the Grantee, the Grantee shall have a reasonable time under the circumstances to perform its obligations under this Ordinance or to procure a reasonable and comparable substitute for such obligations. Under such circumstances the Grantee shall not be held in default or noncompliance with the provisions of the Ordinance nor shall it suffer any penalty relating thereto.

SECTION 10 Miscellaneous Provisions

10.1 Preemption. If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to

the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the Franchising Authority, the jurisdiction of the Franchising Authority shall cease and no longer exist.

10.2 Actions of Franchising Authority. In any action by the Franchising Authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

10.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Wathena
Wathena, Kansas 66090

The notices or responses to the Grantee shall be addressed as follows:

Carson Communications, L.L.C.
P.O. Box 214
328 2nd Street
Wetmore, Kansas 66550
Attn: Robert C. Carson

Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

10.5 Effective Date. This Franchise Ordinance will only take effect upon the closing (the "Effective Date") of Carson Communications, L.L.C.'s Asset Purchase Agreement with Falcon Cablevision. If such closing fails to take place then this Franchise Ordinance will be void and of no further effect.

10.6 Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

10.7 Severability. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof,

all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

10.8 Unauthorized Reception. In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electronically, acoustically, inductively, or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the Cable System or any matter of providing Communications Service or other services provided thereto. Subject to applicable federal and state law, the Franchising Authority shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law which will enforce the intent of this Section 10.8.

10.9 Nondiscrimination in Employment. The Grantee shall neither refuse to hire nor discharge from employment nor discriminate against any person in compensation, terms, conditions, or privileges of employment because of age, sex, race, color, creed, or national origin. The Grantee shall insure that employees are treated without regard to their age, sex, race, color, creed or national origin.

10.10 Grantee May Issue Rules. The Grantee shall have the authority to issue such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable it to exercise its rights and perform its services under this Ordinance and the Rules of the FCC, and to assure the uninterrupted service to each and all of its subscribers. Such rules and regulations shall not be deemed to have the force of law.

10.11 Police Powers. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances of general applicability necessary to the health, safety, and welfare of the public. Franchisee shall comply with all such generally applicable laws and ordinances enacted by the City pursuant to that power.

10.12 Emergency Alert System. Unless otherwise required by federal law or regulation, the Franchisee shall following System upgrade incorporate into its Cable System the capacity which will permit the City, in times of emergency, to override the audio of all Channels simultaneously by telephone from a remote location. The Franchisee shall cooperate with the City in the use and operation of the emergency alert system. The City will be solely responsible for designating the City staff members authorized to use the System and the cost of equipment and telephone service required to access the System by the City its agents, and employees.

10.13 Notice of Shutdown. At least 12 hours before a planned shutdown, when possible, the Franchisee shall give notice on a Cable Channel of maintenance or major equipment change-outs which may result in a loss of service to 20 or more dwelling units for a period of four hours or more in duration.

10.14 Parental Control Lock. Franchisee shall provide, for sale, lease or otherwise, to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any Channels offered by Franchisee.

10.15 Technical Standards. To the extent required by applicable law, the Franchisee shall comply with the FCC Rules and Regulations, Part 76, Subpart K (Technical Standards), as may be amended from time to time shall apply.

10.16 Changes in Federal Law. The City reserves the right to regulate the Franchisee to the extent permitted by federal law as amended from time to time, during the term of this Franchise, which shall be deemed amended in conformity to such regulations upon their effective date.

10.17 Repeal. Ordinance No. 363 of the City of Wathena, Kansas and all other ordinances and parts of ordinances in conflict herewith are hereby repealed provided that the repeal of said Ordinance No. 363 and all other ordinances and parts of ordinances in conflict herewith will only take effect upon the closing (the "Effective Date") of Carson Communications, L.L.C.'s Asset Purchase Agreement with Falcon Cablevision.

Passed and adopted this day of 16 day of March, 1999, subject to applicable federal, state and local law.

City of Wathena

By: Scott B. Hoffman
Mayor

ATTEST:

Karen J. Hillard
Clerk