

APPENDIX C: FRANCHISES

CHAPTER 1 CABLE TELEVISION FRANCHISE

SECTION 101 DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

See Also: SDCL 9-35-25

SECTION 103 GRANT OF NON-EXCLUSIVE AUTHORITY

There is hereby granted by the City to the Grantee, and to its successors, assigns or designees, the non-exclusive right to erect, maintain and operate in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses and other public places in the City of Platte, South Dakota, and subsequent additions thereto, towers, poles, lines, cables, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation in the City of a cable television system, for the purpose of transmission and distribution of audio, visual, electronic and electric impulses in order to furnish television and radio programs and various other communications services to the public for a period of fifteen (15) years, commencing from and after the effective date of this Ordinance.

Authority: SDCL 9-35-26, 9-35-27

SECTION 105 COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Grantee shall, during the term hereof, except in those areas which have been preempted by the Cable Communications Policy Act of 1984, as amended, or which are regulated by the Federal Communications Commission, be subject to all lawful exercise of the regulating and police powers of the City.

Authority: SDCL 9-35-26, 9-35-27

SECTION 107 TERRITORIAL AREA INVOLVED

- (a) This Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of this Ordinance. Grantee shall not be required to furnish service to any customer farther than 400 feet from a customer then wired and receiving Grantee's service, except in cases where not less than six (6) subscribers are within 800 feet of a wired customer receiving Grantee's service and request service.
- (b) In the event the requirement of subsection (a) is not met, extensions of service shall be required only on a basis which is reasonable and compensatory.
- (c) Grantee may, but shall not be required to, serve areas or individual homes adjoining, but outside the City limits that may be served from its existing

facilities. Grantee may negotiate directly with such customers the amount to be charged for the bringing of the service to the customer.

Authority: SDCL 9-35-26, 9-35-27

SECTION 109 LIABILITY AND INDEMNIFICATION

Grantee shall, at all times, keep in effect the following types of insurance coverage:

- (a) Worker's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Platte, South Dakota.

- (b) Property Damage Liability insurance to the extent of Five Hundred Thousand Dollars (\$500,000.00) as to any person and Five Hundred Thousand Dollars (\$500,000.00) as to any one accident and personal injury liability insurance to the extent of Five Hundred Thousand Dollars (\$500,000.00) as to any one person and Five Hundred Thousand Dollars (\$500,000.00) as to any one accident.

Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Worker's Compensation law which may arise out of their erection, maintenance, use, or removal of said attachments or poles within the City, or by any other act of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Worker's Compensation laws in effect that may be applicable to Grantee. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be deposited with and kept on file by the City.

Authority: SDCL 9-35-26, 9-35-27

SECTION 111 GENERAL SYSTEM SPECIFICATIONS

The facilities used by the Grantee shall have a minimum capacity of 36 channels.

Authority: SDCL 9-35-26

SECTION 113 TECHNICAL STANDARDS

Grantee shall be governed by technical standards established by the FCC.

Authority: SDCL 9-35-26

SECTION 115 OPERATION AND MAINTENANCE OF SYSTEM

- (a) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

- (b) The Grantee shall maintain a force of sufficient employees to provide safe, adequate, and prompt service for its facilities.
- (c) Grantee shall operate the cable system and perform service in compliance with FCC rules.
- (d) Grantee shall, except as hereinafter stated, provide the City Finance Officer with 30 days advance written notice of any change in channel assignment for a program service or of a change in the video programming service provided on any channel. Grantee shall not be required to give 30 days notice where the change is made for reasons beyond the control of Grantee, but Grantee shall give such notice as is reasonable under the circumstances. Service of the notice shall be deemed to have been completed on the day the notice is mailed.

Authority: SDCL 9-35-26

SECTION 117 SERVICE TO SCHOOLS AND CITY

The Grantee shall, subject to the line extension provisions of Section 107, provide basic cable service at no cost to public and parochial elementary and secondary schools within the City, at one terminal junction, for educational purposes upon request of the school system.

Grantee shall, subject to the line extension provisions of Section 107, also provide to the City without charge, at one City owned building other than a hospital, nursing home, apartment or building at the airport, to be selected by the Council, one junction terminal to said building and shall also furnish to the building, without charge, basic service to all sets connected within such building to the terminal junction.

The Grantee shall allocate one channel to the City as a public, educational or governmental access channel. Until such time as the City files a written request with Grantee for full-time use of the channel, Grantee shall have the right to use that portion of the channel capacity that is not being used by the City. Grantee shall have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the City in obtaining the necessary licenses and frequency clearance to enable the City to use said channel.

Authority: SDCL 9-35-26

SECTION 119 EMERGENCY USE OF FACILITIES

In the case of any emergency or disaster, the Grantee shall, upon request of the Council, make available its facilities to the City for emergency use during the emergency or disaster.

Authority: SDCL 9-35-26

SECTION 121 SAFETY REQUIREMENTS

The Grantee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

Authority: SDCL 9-35-26

SECTION 123 NEW DEVELOPMENTS

It shall be the policy of the City to liberally amend this franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently or economically serve its customers. Provided, however, that this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

Authority: SDCL 9-35-26

SECTION 125 LIMITATIONS ON RIGHTS GRANTED

- (a) All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Grantee whenever the City Superintendent or Engineer reasonably finds that the same restricts or obstructs the operation or location of any future streets or public places in the City of Platte, South Dakota.
- (b) Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable Ordinances and regulations of the City affecting electrical installation, which may be presently in effect, or changed by future Ordinances.
- (c) In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in manner approved by the City Public Works Superintendent or Engineer, barricade, replace and restore such street, sidewalk, alley, public way, or paved areas in as good a condition as before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.
- (d) All work in any way necessitated by the business of Grantee which may involve the opening, breaking up or tearing up of a portion of a street, sidewalk or other part of any City-owned or City-controlled property shall at the option of the City be done by the City at the expense of Grantee. In such instances Grantee shall save the City harmless against all loss or damage to any person or property in accordance with the provisions of Section 109 of this Ordinance. In the event the City does not exercise its option, in case of disturbance of any street, sidewalk,

alley, public way, or paved area, the Grantee shall at its own expense and in a manner approved by the City Superintendent, replace and restore such street, sidewalk, alley, public walk, or paved area in as good as condition as before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.

- (e) If at any time during the period of this franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- (f) All installations of equipment shall be of permanent nature, durable and installed in accordance with good engineering practices, and of sufficient height to comply with all existing City regulations, ordinances, and state laws so as not to interfere in any manner with the right of the public or individual property owner, and any equipment installed in a public way or public place shall not interfere with the usual travel on such public way or usual use of such public place by the public and during the construction, repair or removal thereof, shall not unduly obstruct or impede traffic.
- (g) The Grantee shall, on the request of any person holding a building moving permit issued by the City or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
- (a) 8. The Grantee shall have the authority to trim trees that are overhanging the streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, so long as such cutting and/or trimming is in following of the City Tree Ordinance (Chapter 8-3) and the guidelines of the City Tree Board as established in the Annual Tree Plan of the City, except that at the discretion of the City, such trimming may be done by the City or under its supervision and direction at the expense of the Grantee.
- (h) Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or

other structure of public improvement; provided, however, that Grantee shall in all cases have the privilege to abandon any property of Grantee in place as hereinafter provided.

- (i) In all sections of the City where the City designates an area where all presently above ground services are to be placed underground, the Grantee shall place its wires underground on the same time schedule and on the conditions that are applicable to the providers of other ground services in the designated areas.
- (j) In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall, subject to the rights of the City to acquire or transfer the system as specified in Section 133, promptly remove all above ground facilities, wires, etc. from the streets and public places other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
- (k) Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

Authority: SDCL 9-35-26

SECTION 127 OWNERSHIP AND REMOVAL OF FACILITIES

All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

Authority: SDCL 9-35-26

SECTION 129 ASSIGNMENT OF ORDINANCE

The Grantee shall not assign this ordinance to another person without prior approval of the City Council, which approval shall not be unreasonably withheld.

Authority: SDCL 9-35-26

SECTION 131 PAYMENT TO THE CITY

- (a) During the term of the rights granted hereunder, and as long as the Grantee operates said system, the Grantee shall pay as compensation to the City, a sum equal to one (1) percent of the annual total gross receipts of the cable system. "Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers for basic cable service. Gross receipts shall not include revenues received as installation charges, and fees for reconnections,

inspections, repairs or modifications of any installation, and all State and Federal Taxes relating thereto. Gross subscriber revenues shall also not include any revenues received (a) as reimbursement of expenses in the operation of any access channels, (b) as advertising payments, (c) from the leasing of cable channels, (d) from programs for which per-channel or per-program charge is made, and (e) from furnishing other communication and non-broadcast services, either directly or as a carrier for another party.

- (b) The payments that Grantee makes to the City shall be in lieu of any occupation tax, license tax, or similar levy by the City and shall be paid annually.
- (c) Grantee shall file with the City within sixty (60) days after the expiration of any fiscal year of Grantee during the term of the rights granted hereunder, a statement showing the gross subscriber revenue as defined herein. It shall be the duty of Grantee to pay to the City within fifteen (15) days after the time for filing such statement the amount due for the fiscal year covered by such statement.
- (d) This amount payable by the Grantee to the City shall be the sole amount payable for all of its rights under this ordinance including, but not limited to, the use of the streets and other facilities of the City in the operation of the Cable System and for the municipal supervision thereof and shall be in lieu of another occupational tax or franchise fee.
- (e) Notwithstanding the annual gross receipts fee or tax payable hereunder, if the Grantee is legally obligated to collect or pay any sales tax or other taxes, the Grantee shall have the right to charge the subscribers an additional amount equal to such tax.

Authority: SDCL 9-35-26

SECTION 133 DURATION AND RENEWAL OF ORDINANCE

The rights granted to Grantee herein shall, except as provided in this Section, terminate fifteen (15) years from the effective date of this Ordinance which Ordinance shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984, as amended, applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, the Ordinance shall remain in effect even if the original fifteen (15) year term has expired. If this Ordinance is not renewed, or if it is revoked for cause by the City, the transfer of Grantee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984, as amended.

Authority: SDCL 9-35-26

SECTION 135 ERECTION, REMOVAL AND COMMON USE OF POLES

- (a) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structures shall

be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.

- (b) Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City Council may require Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
- (c) Grantee shall grant to the City, free of expense, joint use of any and all poles owned by it for any proper municipal purpose acceptable to Grantee, insofar as it may be done without interfering with the free use and enjoyment of Grantee's own wires and fixtures, and the City shall hold Grantee harmless from any and all actions, causes of actions, or damages caused by the placing of the City's wires or appurtenances upon the poles of the Grantee. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the City's joint use of their poles, Grantee is required to change or replace poles or install new poles, the City shall compensate Grantee for such additional expense.
- (d) Where a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

Authority: SDCL 9-35-26

SECTION 137 RATES

- (a) Grantee shall at all times maintain on file with the City Finance Officer a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges. Before making any changes in the rates or charges for basic service, Grantee shall, unless exempted by FCC regulations, file in writing with the City Finance Officer, the new rate change at least thirty (30) days in advance of the effective date of the rate change.
- (b) During the term hereof, Grantee shall comply with the rate regulation rules of the Federal Communications Commission.
- (c) The monthly rate set forth in the schedule filed pursuant to subsection 1 above shall be payable in advance.
- (d) The Grantee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984, as amended, and Federal Communications Commission regulations.

Authority: SDCL 9-35-26

SECTION 139 MISCELLANEOUS

- (a) Grantee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the Council after consideration in a full public proceeding affording due process to all interested persons

- (b) Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy Complaint, it may then be directed to the Finance Officer for investigation. The complaining party and Grantee shall be afforded a reasonable opportunity to present written statements of their position. The Finance Office shall attempt to resolve the Complaints and, if this cannot be achieved, he shall submit a recommendation to the City Council, which shall either (1) dismiss the complaint, or (2) specify corrective steps to be taken by Grantee. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

Authority: SDCL 9-35-26

SECTION 141 MODIFICATION OF OBLIGATIONS

In addition to any other remedies provided by law or regulation, Grantee's obligations under this ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists, or as hereafter amended.

Authority: SDCL 9-35-26