

CABLE TV FRANCHISE

Ordinance No. 82024-01

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO VENTURE COMMUNICATIONS COOPERATIVE, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO ERECT, CONSTRUCT, ACQUIRE, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM FOR THE PURPOSE OF RECEIVING, TRANSMITTING AND DISTRIBUTING THE VARIOUS CABLE TELEVISION SIGNALS TO THE INHABITANTS OF THE CITY OF LANGFORD FOR A PERIOD OF TWENTY (20) YEARS, TOGETHER WITH THE RIGHT TO ERECT, CONSTRUCT, ACQUIRE, OPERATE AND MAINTAIN SAID SYSTEM IN, UPON, ALONG, ACROSS, ABOVE, OVER AND UNDER THE STREETS, ALLEYS, PUBLIC WAYS AND PUBLIC PLACES AS PRESENTLY EXIST, AND ALL EXTENSIONS AND ADDITIONS THEREOF FOR ALL POLES, WIRES, CABLES, LINES, CONDUITS, MANHOLES, TOWERS AND OTHER APPARATUS AS MAY BE NECESSARY FOR OPERATION AND MAINTENANCE OF SAID SYSTEM.

BE IT ORDAINED BY THE CITY OF LANGFORD, SOUTH DAKOTA.

I.

TITLE

This ordinance shall be known and may be cited as:

“Venture Cable Television System Franchise Ordinance.”

II.

DEFINITIONS

SECTION 1. “Basic Video Service” means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Video Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).

SECTION 2. “Cable Television Service” means one or two-way transmission to Subscribers of Video Programming, or other programming service, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service. Cable Television Service shall not include any streaming video programming delivered or offered over the public internet.

SECTION 3. “Cable Television System” shall mean all of the component physical operational and programming elements of any network of cables, optical, electrical or electronic equipment, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog, digital or by any other means to provide Cable Television Service.

SECTION 4. “City” is the City of Langford, South Dakota.

SECTION 5. “Company” hereinafter shall mean Venture Communications Cooperative, of Highmore, South Dakota.

SECTION 6. “Council” is the elected City Council of the City.

SECTION 7. “Facilities” are, but not limited to, poles, wires, cables, modulators, towers, antennae and apparatus designed, constructed and/or wired for the purpose of receiving, transmitting and distributing cable television and Video Programming signals.

SECTION 8. “FCC” shall mean the Federal Communications Commission.

SECTION 9. "Franchise" means an initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other MVPD facility.

SECTION 10. "Franchise Area" means the area within the legal boundaries of the City.

SECTION 11. "Person" is any person, firm, partnership, association, corporation, cooperative, company, organization or any other legal entity.

SECTION 12. "Streets" mean the surface of and the space above and below, in, along and across any public street, way, place, right-of-way, road, highway, freeway, bridge, tunnel, lane, path, bikepath, alley, court, sidewalk, parkway, drive, communications or utility easement by whatever name called, now or hereafter existing as such within the franchise area.

SECTION 13. "Subscribers" are those persons contracting to receive Cable Television Services furnished under this franchise by the Company.

SECTION 14. "Video Programming" means those programming services commonly provided to subscribers by a Video Service Supplier including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, and regardless of the manner or basis on which such services are calculated or billed.

III. GRANT OF NON-EXCLUSIVE AUTHORITY

SECTION 1. There is hereby granted by the City to the Company, and to its successors and assigns, the non-exclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now existing or dedicated and all extensions of and additions thereto in the City, all facilities, television conductors and fixtures necessary for the maintenance and operation in the City of a Cable Television System for the purpose of providing Cable Television Service to all Persons within the Franchise Area which elect to subscribe for such Cable Television Services.

SECTION 2. The City acknowledges that in addition to providing Cable Television Service, the Cable Television System shall also be capable of providing other communications services, including without limitation, broadband communications services, within the Franchise Area. The City further acknowledges that the provision of broadband communications service is subject to the exclusive regulatory authority of the FCC and is not presently subject to the regulatory authority of the City.

IV. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Company shall comply with applicable local, state and federal laws and ordinances, together with reasonable police power regulation by the City.

V. TERRITORIAL AREA INVOLVED

This Franchise is for the present territorial limits of the City and any area subsequently added thereto during the term of this Franchise; provided however, in the event of annexation by the City, or as development occurs, any new territory shall become part of the area covered, provided, however, that the Company shall not be required to extend service beyond its present system boundaries unless there is a minimum of twenty-five (25) homes per cable mile as measured from the last fiber node or terminating amplifier.

VI LIABILITY AND INDEMNIFICATION

SECTION 1. The Company shall maintain at all times sufficient and adequate insurance coverages as required by law.

SECTION 2. The Company shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted to the Company pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to the City's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Company's facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

SECTION 3. In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must with respect to each claim:

- a) Promptly notify the Company in writing of any claim or legal proceeding which gives rise to such right;
- b) Afford the Company the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
- c) Fully cooperate with reasonable requests of the Company, at the Company's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

VII TECHNICAL STANDARDS

The Company shall meet the requirements of the technical standards established by the FCC, which said standards are acceptable to the City.

VIII. CONSTRUCTION, OPERATION AND MAINTENANCE OF SYSTEM

SECTION 1. The Company may commence construction upon receiving all necessary and proper FCC permits, waivers, certifications, and approvals.

SECTION 2. Construction shall comply with the National Electrical Code Specifications.

SECTION 3. The Company shall maintain a sufficient number of employees to provide safe, adequate, and prompt service and repairs of its facilities, and periodically make system evaluation tests.

IX NEW DEVELOPMENTS

This Franchise shall allow the Company to take advantage of new developments in technology and state of the art improvements in providing the best service at a reasonable cost.

X
CONDITIONS ON STREET OCCUPANCY

SECTION 1. All facilities installed by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys or other public ways and places. If at any time during the period of a Franchise the City shall elect to alter, or change the grade or location of any street, alley or other public way, the Company shall, at its own expense, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If the City reimburses other occupants of the street, the Company shall be likewise reimbursed.

SECTION 2. All of said facilities shall be construed, maintained and operated under the supervision of the Company. Plans for all facilities to be construed will be coordinated with the proper City officials. The Company shall at all times maintain an up-to-date record of location of all its facilities and shall provide any related information required by City personnel.

SECTION 3. In case of disturbance of any street, the Company shall, at its own expense and in a manner approved by the street department, replace and restore such street in as good a condition as before such disturbance, insofar as the same may be practicable.

SECTION 4. The Company shall, at the request of any contractor hired by the City or any person, locate free of charge, any of its facilities. The Company shall be given not less than 24 hours advance notice of such locations, except for qualified emergencies, such as broken water mains, etc. Damage to any facilities, located or not, will be billed to the contractor.

SECTION 5. Any property of the Company elected to be abandoned in place shall be abandoned in such a manner as the City may prescribe.

SECTION 6. The Company shall obtain all required permits from the City before commencing any construction upgrade or extension of the System.

SECTION 7. The City shall impose no permit fees upon the Company.

SECTION 8. The Company shall, on request of any Person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Company shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

SECTION 9. The Company shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks, or public easements of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company.

SECTION 10. Nothing contained in this Ordinance shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Company's facilities.

SECTION 11. All cable and passive equipment for cable television reception service installed by the Company at a Subscriber's location shall remain the property of the Company and the Company shall have the right to remove said cable and equipment. Upon termination of service to any Subscriber, the Company shall promptly remove all its above ground facilities and equipment from the premises of such Subscriber upon his request.

XI
RATES

SECTION 1. The Company shall adopt and maintain on file at its office a schedule setting forth all rates and charges to be made to subscribers for each type of service available.

SECTION 2. During the term hereof, the City may regulate rates only if authorized to do so by the FCC regulations and then such regulation shall only be in accordance with the provisions of such regulations.

XII
EMERGENCY USE OF FACILITIES

In case of any emergency or disaster, the Company shall, upon request of the Council, make available whenever possible its facilities to the City during such emergency or disaster period.

XIII.
SAFETY REQUIREMENTS

The Company shall at all times use ordinary care and shall maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

XIV.
TRANSFER OF FRANCHISE

The Company shall not transfer this Franchise to another person without prior approval of the Council which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the Company may with prior written notice to the City transfer its rights and delegate its duties under this Franchise to a subsidiary entity which is wholly-owned by the Company.

XV.
DURATION OF FRANCHISE

This Franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of twenty (20) years.

XVI.
TAMPERING

SECTION 1. It shall be unlawful for any person or persons to obtain any communications services from the Company by installing, rearranging or tampering with any facilities or equipment of said company for the purpose of receiving any signal, picture, sound or transmission, without subscribing and paying the Company therefor.

SECTION 2. Any person violating this Article shall be guilty of a misdemeanor punishable by a fine of not to exceed \$100.00, imprisonment for a term not to exceed thirty (30) days, or both.

XVII.
SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions herein. The City hereby agrees not to amend, alter or change this Franchise Ordinance without the prior express written consent of the Company

XVIII.
SERVICE TO CITY AND SCHOOLS

The Company shall provide one cable drop, one cable outlet, and monthly Basic Video Service without charge to one City-owned building, excluding hospitals, nursing homes, apartments or buildings located at the airport. No redistribution of the free service provided pursuant to this section shall be allowed.

The Company shall provide one cable drop, one cable outlet, and monthly Basic Video Service without charge to all public and private elementary and secondary schools, excluding home schools, located within the city.

XIX.
PUBLICATION

The Company shall assume the cost of publication of the Franchise and file its acceptance thereof.

XX
MISCELLANEOUS

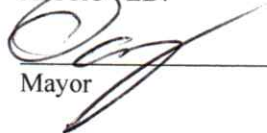
SECTION 1. Written Notice. All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally or by United States Mail to the offices of the Company in Highmore, South Dakota, in the case of the Company, or the City's Finance Office in the case of the City.

SECTION 2. Franchise Renewal. Any renewal of a Franchise shall be done in accordance with applicable law, if any.

SECTION 3. Amendment of Franchise. The Company and the City may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time, in accordance with applicable law.

SECTION 4. Marketing. The Company shall have the right to conduct direct selling in the Franchise Area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

APPROVED:



Mayor

First Reading

4/9/24

Second Reading

5/14/24

ATTEST:



Finance Officer

Adopted

5/14/24

Published

5/22/24