

# **CITY OF TEA, SOUTH DAKOTA**

## **Cable Services Franchise Ordinance #203**

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CABLE SERVICES FRANCHISE ORDINANCE

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ORDINANCE NO. 203

AN ORDINANCE GRANTING A CABLE SERVICES FRANCHISE.

BE IT ORDAINED BY THE CITY OF TEA, SOUTH DAKOTA:

I.

SHORT TITLE

This ordinance shall be known and may be cited as the Tea Cable Services Ordinance ("Ordinance").

II.

DEFINITIONS

For the purpose 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 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.

1. "Basic Cable Service" means any service tier which includes the retansmission of local television broadcast signals, as provided in the Cable Act.
2. "Cable Act" means the Cable Communications Policy Act of 1934, Pub. L. No. 98-549, (codified at 47 U.S.C. § 521 et. seq. (1982 & supp. V. 1987), as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104, as it may from time to time, be amended.
3. "Cable Service" has the same meaning as in the Cable Act.
4. "Cable System" has the same meaning as in the Cable Act.
5. "Channel" has the same meaning as in the Cable Act.
6. "City" means the City of Tea, South Dakota.
7. "City Council" means the Mayor and the Councilmembers of Tea, South Dakota.
8. "County" Means Lincoln County, South Dakota.
9. "Demarcation" means a point that is 12 inches on the subscriber's side of the protector, or the equivalent thereof in cases where a protector is not employed.
10. "Drop" means the cable that connects the subscriber ground block or other point of demarcation to the nearest feeder cable of the system.
11. "FCC" means Federal Communications Commission, its designee, or any successor thereto.
12. "Franchise" means the initial authorization, or renewal thereof, issued by the franchising authority, whether such authorization is designated as a franchise, permit, license resolution, contract, certificate, or otherwise, which authorizes construction and operation of a Cable System for the purpose of offering cable service or other service to subscribers.

13. "Franchise fee" means any tax, fee, or assessment of any kind imposed by the City on the Grantee or Grantee's subscriber, or both, solely because of their status as a cable operator, cable subscriber, or cable user.
14. "Grantee" means the Person agreeing to be bound by the terms of this Franchise ordinance, its contractors/-subcontractors, agents, assigns or its successor in accordance with the provisions of this Franchise.
15. "Gross revenues" shall mean all revenue received from Cable Service directly by the Grantee from the Operation of a Cable System within the City, including but not limited to Basic Cable Service, Premium Cable Service and Other Services, The term "gross revenues" shall not include installation fees, disconnection fees, reconnection fees, upgrade or downgrade service fees, fees for telecommunications services, is any, fees for the sale of or servicing of equipment, Franchise Fees, advertising revenues, late fees, any fees itemied and passed through as a result of Franchise imposed requirements or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state or other governmental unit and collected by Grantee for such governmental unit.
16. "Person" means any individual person, firm, partnership, association, corporation or organization of any kind, and any other legally recognized entity.
17. "Premium Cable Service" means the delivery over a cable system of pay-per channel audio-visual signals to Subscribers, including rental of equipment used specifically for the receipt of such programming, for a fee or charge, in addition to the charge for Basic Cable Services or Cable Service.
18. "Public Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Service Area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing or transmitting the Grantee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.
19. "Other Cable Servcie" means the delivery over the System of pay-per program or pay-per-view audio-visual signals or any other type of Video Programming other than Basic Cable Service and Premium Cable Service to Subscribers, including rental of equipment used for the receipt of such programming, for a fee or charge, in addition to the charge for Basic Cable Service, Cable Service, and/or Premium Calbe Service.
20. "School District means the Tea Area School District 41-5.
21. "Service Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.
22. "Subscriber" means any member of the general public who receives Cable Service distributed by a Cable System and does not further distribute it.
23. "Video Programming" has the same meaning as in the Cable Act.

### III.

#### QUALIFICATIONS OF GRANTEE AND GRANT OF NON-EXCLUSIVE AUTHORITY

1. The City hereby grants to the Grantee a nonexclusive franchise, right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, above and over and under all Public Ways and all future extensions thereof, and additions thereto, within the City using poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a Cable System for the purpose of providing cable service, Video Programming and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public, provided that all operable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with in a manner acceptable to the city. The right so granted includes the right to use and occupy said Public Ways and public places and all matter of easements for the purposes herein set forth.
2. The City specifically reserves the right to grant, at any time, additional Franchises for a system in accordance with City, state and federal law.

### IV.

#### DURATION AND ACCEPTANCE OF FRANCHISE

This Franchise shall commence on the effective date of the signed acceptance of this Ordinance by the Grantee and shall expire ten (10) years thereafter unless renewed, revoked, or terminated sooner as herein provided.

### V.

#### COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, ORDINANCES AND CODES

1. Except in those areas which have been preempted by the Cable Act, or any other applicable federal or state law, the Grantee shall be subject to the police powers of the City to adapt and enforce ordinances necessary to the health, safety, and welfare of the public.
2. All facilities and equipment of the Grantee shall be constructed and maintained to the premise demarcation point in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards. All facilities and equipment of the Grantee from the demarcation point to customer premise equipment shall be constructed and maintained in accordance with the provisions of the National Electrical Code of the National Board of Fire Underwriters, and other national, state or City electrical or construction codes which may be in effect.

### VI.

#### TERRITORIAL AREA INVOLVED

This Franchise relates to the present territorial limits of the City and to any area added to it during the term of this Franchise.

## VII.

### LIABILITY AND INDEMNIFICATION

1. Grantee shall maintain the following types of insurance with a company, authorized to do business as an insurance producer in the State of South Dakota with a rating by Best of not less than "A."
  - a. Worker's compensation upon its employees with statutory limits of the worker's compensation laws of the State of South Dakota and Coverage B employer's liability covering operations of the individual/group/business and its consultants/subcontractors. This shall include "Other States Insurance" so as to include all states not named on the "declarations" page of the insurance policy, but excepting monopolistic state funds states. The available limits for Coverage B, employer's liability shall be not less than \$1,000,000 each accident, \$1,000,000 disease policy limits.
  - b. Commercial general liability (CGL) insurance providing coverage not less than that of the standard commercial general liability insurance policy ("occurrence form") for operations of the individual/group/business or its consultants/subcontractors. If the "occurrence form" is not available, "claims made" coverage shall be maintained for three years after final completion and acceptance of the project by the City. The policy shall include contractual personal injury, bodily injury, and property damage liability coverages with total available limits not less than \$1,000,000 per occurrence, not less than \$2,000,000 general aggregate, \$2,000,000 aggregate products and completed operations. The CGL insurance policy shall name the City and its duly authorized representatives as an additional insured. The City shall be provided with a copy of the certificate and policy endorsement prior to the effective date of this ordinance.
  - c. Automobile liability insurance covering all owned, non-owned, and hired automobiles, trucks, and trailers. Such insurance shall provide coverage at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence.
2. Grantee shall indemnify, defend, and hold harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under the Worker's Compensation law which may be caused by the erection, maintenance, use or removal of any of Grantee's attachments, poles, or other undertakings, within the City, or by any action of Grantee, its agents or employees, provided the Grantee shall not have any liability or duty to defend arising out of any claim, demand, cause of action, or proceeding resulting from the negligence or willful misconduct of the City, the City Council or any officers, agents, employee, or commission of the City
3. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, suits, judgements, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. The City shall give the Grantee prompt written notice of any such claims, demands, actions, suits, judgments, costs, expenses or liabilities.
4. All insurance required shall be and remain in full force and effect for the entire life of this Franchise.. Said policy or policies of insurance, or a certificate of insurance thereof, shall be provided to the City prior to the effective date of this ordinance, and then deposited with and kept on file by the City. The City shall be notified at least 30 days prior to expiration or cancellation of any such insurance policy.
5. All subcontractors of Grantee working in the City's right-of-way shall be bonded.
6. In addition, Grantee shall indemnify, defend, and hold harmless the City for all damages and penalties at all times during the term of this Franchise, as a result of the legal process followed and conducted by the City for granting this Franchise, or Grantee's conduct or performance under this Franchise. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, anti-trust, errors and omissions, theft, fire, and all other damages arising out of Grantee's exercise of this Franchise, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise; such indemnification shall include, but not be limited to, reasonable attorneys' fees and costs.

7. If, in the opinion of the City, the interests of the City cannot reasonably be represented in good faith by the Grantee, the Grantee shall pay all expenses incurred by the City in defending itself, including all reasonable out-of-pocket expenses, including attorneys' fees and costs.

## VIII SYSTEM DESIGN

Grantee shall construct a cable system as follows:

1. The system shall be of the type generally referred to as "single trunk, single feeder" wherein the trunk cable shall carry signals in the minimum frequency range of 5-750 MHz. The system shall provide the capability of distribution of multiple Channels of Video Programming.
2. The system shall have the capability of providing video, voice, and data services.
3. Grantee shall provide status monitoring of all power supplies at the node sites. This will be completed by the end of the first year of franchise agreement.
4. Within 18 months of the effective date of this franchise, Grantee's cable system shall be fully capable of two-way addressable operation at the subscriber's receivers and from Grantee's customer service and head end facilities on at least one channel.
5. Any system improvements shall be designed, constructed, and operated to meet the technical standards promulgated by the FCC.
6. The system shall be capable of interconnecting with other cable systems within and adjacent to the City.

## IX. OPERATION AND MAINTENANCE OF SYSTEM

1. The Grantee shall render safe and 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.
2. The Grantee shall maintain a force of sufficient employees to provide safe, adequate and prompt service for its facilities.
3. Service shall be provided in compliance with all consumer protection and customer service regulations governed by the Cable Act, as amended from time to time.

## X. CONTINUITY OF SERVICE MANDATORY

1. All subscribers shall have the right to continue to receive service, insofar as such Subscribers comply with financial and policy obligations owed to Grantee. If Grantee elects to overbuild, rebuild, modify, or sell the system, or the City gives notice of intent to terminate or fails to renew this Franchise, Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service. If Grantee fails to provide such service, the City may do so.
2. If the Franchisee is changed, or if a new operator acquires the system, Grantee shall cooperate with the City, new Franchisee, or operator in maintaining service to all subscribers. During such period Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.



3. If the Grantee fails, for reasons not beyond its control, to operate the system for ten consecutive days without prior approval of the City, the City may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for Grantee, the City shall receive the revenue from the system's operation, and the Grantee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City during its period of operation that is the result of Grantee's failure to perform.
4. Nothing in this ordinance shall be construed to be a waiver by Grantee of its constitutional or statutory rights under federal or state law.

#### XI.

#### SUBSCRIBER PRIVACY

The Grantee shall comply with all federal subscriber privacy laws, including information relating to signals from any cable communications channel to a subscriber terminal for purposes of monitoring individual viewing patterns, data or information gathered by monitoring transmission of a signal from a subscriber terminal, and electronic sweeps of the system. The Grantee will comply with Section 631 of the Cable Act.

#### XII.

#### EMERGENCY USE OF FACILITIES

In the case of any emergency or disaster, including weather emergencies, the Grantee shall, upon request of the governing body of the City or an appropriate law enforcement or civil defense authority, make available its facilities to the City, local law enforcement official, or civil defense authorities during any emergency or disaster.

#### XIII

#### SAFETY REQUIREMENTS

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

#### XIV.

#### CONDITIONS

1. All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be installed in accordance with the provisions of the National Electrical Safety Code (NESC) prepared by the Bureau of Standards and so located as to cause minimum interference with the proper use of Public Ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any Public Ways and places, and poles, towers, and any other structures, lines, or equipment shall be removed by Grantee whenever in the opinion of the City Engineer, they restrict or obstruct the operation or location of any facility.
2. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located, erected and maintained so as not to endanger or interfere with the lives of persons or to interfere with any installations of the City or of a public utility serving the City, or to interfere with new improvements the City may deem proper to make.

3. In the maintenance and operation of their transmission and distribution system in the Public Way, and in the course of any new construction or addition to their facilities, Grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by Grantee in the course of their operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.
4. No excavations of any type shall be performed or caused to be performed without prior written authorization from the City Engineer. The City may require all or any part of the installation to be buried underground in stances or areas where other public utilities are required to be located underground.
5. If the business of Grantee necessitates the opening, breaking up or tearing up of a portion of a Public way or other part of any City-owned or City-controlled property, such act of opening, breaking up or tearing up of the property shall at the option of the City be performed by the City prior to the performance of Grantee's work by Grantee. If the City does not exercise its option, in case of disturbance of any Public Way, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore such Public Way to the same or substantially the same condition as the Public Way was prior to such disturbance. 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 VII hereof.
6. If at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any Public Way, the Grantee shall, upon 30 days prior notice by the City, remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures, as applicable, at Grantee's sole cost and expense.
7. 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 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 obstruct or impede traffic.
8. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting it, and the Grantee may require such payment in advance. The Grantee shall be given not less than ten (10) days advance written notice of such action.
9. The Grantee may trim trees upon the overhanging 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, except that at the option of the City, such trimming may be performed by the City or under the City's supervision and direction at the expense of the Grantee.
10. In all sections of the City where the cables, wires or other like facilities of public utilities are maintained underground, the Grantee shall bury and maintain its wires, cables or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so. Underground line shall be placed at depths consistent with the provisions of the National Electrical Safety Code prepared by the National Bureau of Standards. The Grantee shall be responsible for all costs associated with damage to any line which has been installed at a depth less or more than that required. If the ground is frozen, saturated or otherwise unable to facilitate an underground installation and underground installation is required, the installation shall be performed on a temporary basis in compliance with state and federal rules. As soon as conditions change to permit proper underground installation of the cable, the Grantee shall install the facilities no later than 30 days after such conditions have changed to allow the installation.
11. The Grantee shall not allow its cable service or other operations to interfere with television and radio reception of persons not served by the Grantee.

12. Grantee shall, at its sole and exclusive expense, protect, support, temporarily disconnect, relocate on the same Public way or public place, or remove from the Public Way 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 may abandon any property of Grantee in place as hereinafter provided.
13. If the use of any part of the system is discontinued for any reason for a continuous period of twelve months, or if the system or property has been installed in any Public Way 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 promptly remove from the Public Way, or public places all such property and poles of such system other than any which the City, may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the Public Way or other area from which such property has been removed to a condition the City.
14. 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.

#### XV.

#### REMOVAL OF FACILITIES

1. Upon termination of service to any subscriber, the Grantee shall promptly remove all its aerial drops and equipment from the premises of such subscriber upon request. Underground drops shall remain buried.
2. Upon revocation or expiration of this Franchise, the City may request the removal of the Grantee's aerial equipment and facilities. Such removal shall be at the expense of the Grantee. Any disturbance to City property during such removal process shall be restored to its original condition in so far as may be reasonably practicable for the situation. The City reserves the right to inspect and approve the condition of its property after such removal. Underground facilities shall remain buried.

#### XVI.

#### TRANSFER OR SALE OF FRANCHISE

1. This Franchise and the rights granted under this Ordinance may not be sold, assigned, or transferred by the Grantee either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any rights, interest, or property therein, pass to or vest in any person without the consent of the City.
2. The Grantee shall provide written notice to the City of any proposed sale, assignment, or transfer. Within 120 days of receipt of such notice, and following a public hearing, within ten days after the public hearing, the City shall approve or deny the sale, assignment, or transfer.
3. The City reserves the right of first refusal of any offer to purchase the system in favor of the City purchasing the system under substantially the same terms and conditions as the offer.
4. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the City either lawfully acquires ownership of the Cable System or by its actions lawfully affects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be on the terms set forth in 47 U.S.C. § 547.
5. If the Franchise is revoked, the Grantee may request and the City shall give Grantee in its sole discretion, a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. During such period, the Grantee may continue to operate pursuant to the terms of its prior Franchise. However,

in no event shall such authorization exceed a period greater than 120 days from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law. The Grantee's continued operation of its Cable System during the 120 day period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or the Grantee.

#### XVII.

##### PAYMENT TO THE CITY

1. During the term of this Franchise and so long as Grantee or its successors or assigns operate the Cable System, commencing from the effective date of this ordinance, Grantee shall pay to the City the sum of five (5) percent of the total annual Gross Revenue. The Franchise Fee shall be payable monthly or quarterly, upon the written notice of such election by Grantee, within thirty (30) days of the expiration of the preceding month. A brief report shall accompany the payment showing the basis for the computation of the amount paid in a manner described in Appendix A.
2. Such payments by Grantee to City shall be in lieu of any occupation tax, license tax, or similar levy, and shall be paid annually. Nothing herein contained, however, shall in any way relieve Grantee or its assigns or successors from the obligation of paying property taxes to the City, or any other governmental subdivision of the State of South Dakota or any other taxes lawfully levied by the State of South Dakota on the operation of the Grantee. Such payment also does not affect the responsibility of Grantee to collect state and local sales tax on the service provided.
3. The City may, at its request, audit or inspect the books and records of Grantee related to gross revenue, as defined herein, up to seven years prior to the date of the request. In the event any such audit or inspection by the City determines that the Grantee's obligations to the City were under-reported by more than five percent, the cost of such audit or inspection shall be paid by Grantee.
4. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by the City.
5. If a payment is not made by the due date, interest on the amount due shall accrue from such date at an annual rate of 12 percent.

#### XVIII.

##### ERECTION, REMOVAL AND COMMON USE OF POLES

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City Engineer with regard to locations, height, type or any other pertinent aspect. 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 Council determines that the public convenience would be enhanced thereby.
2. There is hereby granted to the extent that the City is authorized to so do; the right and authority to Grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from the City any and all holders of public licenses and franchises within the corporate limits of the City of Tea, including Qwest Communications, Inc. (and any affiliates thereto), Xcel Energy and Southeastern Electric, to use such towers, poles, lines, cables and other equipment and facilities, with the exception of city street light poles, subject to all existing and future ordinances and regulations of the City. It is the stated intention of the City that all other holders of public licenses and franchises within the corporate limits of the City shall cooperate with Grantee to allow Grantee's joint usage of their poles and pole-line facilities whenever possible or wherever such usage does not interfere with the normal operation of said poles and pole-lines so that a number of new or additional poles constructed by Grantee within the City may be minimized.

3. Grantee hereby grants to the City, free of expense, joint use of any and all poles owned by them 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 action, or damages caused by the placing of the City's wires or appurtenances upon the poles of 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.
4. Where a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreements therefore with the Grantee cannot be reached, the Council may require the Grantee to permit such use for such consideration and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operation.
5. To the extent the State of South Dakota does not regulate the rates, terms, and conditions of pole attachments pursuant to federal law, the City shall follow the FCC's rate-setting formula and pole attachment regulations and decisions to resolve any dispute concerning the use of Grantee's poles or underground conduit by a public utility. Notwithstanding the foregoing, nothing in this ordinance shall be construed to be a waiver by Grantee of its constitutional or statutory rights under federal or state law.

#### XIX.

#### RATES

1. Grantee shall at all times maintain on file with the City Finance Officer a schedule setting forth all rates and changes to be made to Subscribers for Basic Cable Service, including installation charges.
2. Grantee shall not discriminate in rates between customers of the same category except to the extent permitted by federal or state law.
3. Grantee's rates for Basic Cable Service shall be subject to regulation by the FCC and/or the City as provided for in the Cable Act and implementing regulations.

#### XX.

#### PERFORMANCE EVALUATION

1. Within 60 days of the second and fourth anniversaries of the effective date of this franchise, the governing body of the City, as part of a regularly scheduled meeting, and upon notice to the public, may hold a hearing to evaluate the performance of the Grantee. Topics may include, but are not limited to, applications of new technology, system performance, services provided, complaints, privacy issues, and franchise modification.
2. Grantee shall fully cooperate with the City regarding this evaluation. Grantee will at its expense provide such information, data, and documents as the City may reasonably request in connection with the evaluation.
3. If the City reasonably determines that evidence exists of inadequate cable system performance, it may require Grantee to perform tests and analyses as necessary, directed toward the identified or suspected inadequacies. The costs of such tests and analyses shall be borne by the Grantee if said tests and analyses determine that the inadequate cable system performance alleged by the City, in fact, exists. The Grantee shall fully cooperate with the City in the performance of any tests. Results of the tests may include, but are not limited to the following:
  - a. Identification and qualifications of the person performing the tests.
  - b. The nature of the identified or suspected inadequacy which precipitated the test.
  - c. What system components were tested.

- d. The equipment used and procedures employed in testing.
- e. The results, and our analyses and interpretation of the results of the tests.
- f. The method, if any, by which any identified system inadequacy has been, or will be rectified.
- g. Recommendations, if any, for additional action.
- h. Any other information pertinent to the tests and analyses which may, be required or is useful.

## XXI

### COMPLAINT PROCEDURES

1. The Grantee shall maintain a customer service facility which Subscribers may telephone during regular business hours to report complaints. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to this service facility. Should Grantee fail to satisfy a complaint, it may then be directed to the City Finance Officer for investigation. In response to a complaint, Grantee shall be afforded a reasonable opportunity to present written statements of its position. The City Finance Officer shall attempt to resolve the complaints but, if this cannot be achieved, he shall submit a recommendation to the City Council, recommending that: (1) the complaint be dismissed, or (2) corrective action be taken by Grantee. Appeal from the Commission's action may be made to the appropriate judicial or administrative forum.
2. As notice of the complaint procedure described in subsection 1, the following information will be distributed in printed form to all new Subscribers at the time of installation:  
  
Pursuant to Section 76.607 FCC Rules, all subscribers are hereby notified that Service Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's Customer Service facility. If the Service Complaint is not resolved in a reasonable length of time it shall then be directed to the office of the City Finance Officer at the City, and shall be processed in accordance with Section XXI of the above-referenced ordinance.
- 3: Notwithstanding the foregoing, Grantee shall comply with all applicable rules of the FCC with regard to complaint procedures and customer service standards including any required modifications of the complaint procedures or notice to subscribers, as may from time to time be needed to conform such notice and procedures to the FCC rules.

## XXII.

### CITY POLICE POWERS

Grantee's rights under this Franchise are subject to the police powers of the City to, adopt and enforce ordinances necessary for the health, safety, and welfare of the public subject to federal and state law.



XXIII.

Separability

1. 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 a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.
2. Should any provision of this Franchise be inconsistent or at variance with any rule, regulation or policy, in whole or in part, of the Federal Communications Commission or any other agency having jurisdiction, such provision shall be invalid, but the remaining provisions hereof shall not be affected thereby.

XXIV.

NOTICE REQUIREMENTS

All notices, reports, or demands required by this Franchise shall be given in writing. All notices to the City shall be to the City Finance Officer. All notices to the Grantee shall be to its general manager.

XXV.

COSTS TO CITY

1. Grantee shall reimburse the City for all incidental expenses incurred by it in connection with the publications required for adoption of this ordinance and the rights granted to Grantee hereunder. Such payment shall be made by Grantee to City within thirty days after City shall furnish Grantee with a written statement of such expense.
2. The Grantee shall assume the cost of publication of this Franchise as such publication is required by law and such is payable upon the Grantee's filing of acceptance of this Franchise.

XXVI

ORDINANCES REPEALED

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. This ordinance repeals and supersedes Ordinance #160.

XXVII.

COST DEFINED

It is understood that only the franchise fee shall constitute the franchise fee. Any payments made or costs incurred in the provision of other services required by this Franchise shall not be considered part of the franchise fee.

XXVIII.

REOPENERS

It being recognized that the cable television industry is undergoing significant changes in the law, communications technology, services, and competition; because these changes over the term of Grantee's franchise are not entirely predictable at the present time, Grantee and the City agree to negotiate in good faith modifications to Grantee's franchise to the extent necessary to allow the City and the Grantee to benefit from such changes.

XXIX.

REQUIRED SERVICES

1. The Grantee shall provide the following services to public institutions:
  - a. The Grantee shall provide Basic Cable Service to all public elementary, secondary, post high, and support locations within the City one junction terminal at each building for educational purposes upon request by the City or the school system and at no extra cost to it or to the City or the school system. This shall mean only an energized cable to such buildings. The cost of any internal wiring shall be borne by the institution.
  - b. Grantee shall also provide the City, for Basic Cable Service to all City owned buildings in the City, without charge, one junction terminal to each building at a location therein to be selected by the City.
  - c. Grantee shall, also provide the County, for Basic Cable Service to all county-owned buildings in the City, without charge, one junction terminal to each building at a location therein to be selected by the County.
  - d. The buildings to which service shall be provided which may from time to time be amended by the City to include public buildings that are within two hundred (200) feet of Grantee's energized cable. Buildings beyond two (200) feet of Grantee's energized cable may be served if the City agrees to pay for the cost of extending plant beyond two hundred (200) feet..
2. Grantee shall provide the following additional services to the City of Tea, Lincoln County, the School District, and the subscribers of Grantee's cable television system:
  - a. Emergency Alert Services consistent with FCC regulations.
  - b. Provide one dedicated channel carrying one signal of acceptable quality, meeting all applicable FCC standards, for use by the City of Tea, its departments and agencies, such channel to be used at the discretion of the City.
  - c. Grantee shall at all times maintain a system with the technical capability of providing not less than 60 channels of information and entertainment.

XXX.

EQUAL PROTECTION

If the City enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the City's Public Ways for the purpose of constructing or operating a Cable System or providing cable 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.

XXXI.

ENFORCEMENT AND TERMINATION OF FRANCHISE

1. This Franchise may be terminated by the City upon violation of its terms by the Grantee.
2. If the City becomes aware of violations of the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged violation.
3. The Grantee shall have thirty days from receipt of the notice (a) to respond to the City contesting the allegation, or (b) to cure it, or (c) if, by the nature of the violation, such violation cannot be cured within the thirty day period, initiate reasonable steps to remedy it and notify the City of the steps being taken and the projected date that they will be completed.



4. If the Grantee fails to respond to the notice, or if the alleged violation is not remedied within sixty days after the Grantee is notified of the alleged violation, or such other period as is agreed to between the Grantee and the City, the City shall schedule a public hearing to investigate the violation. Such public hearing shall be held at the next regularly scheduled meeting of the governing body of the City which is scheduled at a time which is no less than five business days therefrom. The City shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard, to present and cross-examine witnesses. At such time, the City may terminate the Franchise.
5. Enforcement of the terms of this Franchise shall be under the laws of South Dakota and the United States.
6. The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

XXXIII.

PENALTY

Violation of this ordinance shall be punished under the general penalty provisions of the Revised ordinances of the City.

Dated this 19<sup>th</sup> Day of July, 2010.

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John M. Lawler, Mayor

ATTEST:

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Dawn R. Murphy, Finance Officer  
Municipal Finance Officer

(SEAL)

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Second Reading: July 19, 2010  
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