

## **Chapter 8**

### **Cable TV**

#### **Section 8-1 Grant of non-exclusive authority.**

The city has approved of the legal, character, financial, technical, and other qualifications of Satellite Cable Services and the adequacy and feasibility of Satellite Cable Services construction arrangements as part of a full public proceeding affording due process, including notice to all interested persons and members of the public of the line extension provisions of Section 8-13 hereof. There is hereby granted by the city to Satellite Cable Services a non-exclusive franchise, right, and privilege to construct, erect, operate, modify, and maintain, in, upon, along, across, above, over, and under the highways, streets, alleys, sidewalks, public ways, and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the city, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the city of a Cable Television System for the purpose of distributing television and radio signals, and other electronic pulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways, public places, and all manner of easements for the purposes herein set forth.

#### **Section 8-2 Duration and renewal.**

The Franchise granted herein shall terminate fifteen (15) years from date of the expiration of Cable Television Franchise #152, subject to renewal for periods of reasonable duration on the same terms or conditions as contained herein, or on such different or additional terms and conditions as may be lawfully specified by the city and as are consistent with the requirements of Rule 76.31 of the FCC. No renewal hereof shall be granted unless authorized by the city following a public hearing. Satellite Cable Services shall be awarded a franchise renewal provided its application shows that its CATV service during the preceding franchise period has reflected a good faith effort to serve the needs and interests of its service area.

#### **Section 8-3 Compliance.**

Satellite Cable Services shall, at all times, operate and maintain its Cable Television System in full compliance with the rules, regulations, and standards of the FCC. Satellite Cable Services, at all times, during the life of this franchise, be subject to all lawful exercise of the police power by the city and to any such reasonable regulations as the city shall hereafter provide.

#### **Section 8-4 Territorial area.**

This Franchise relates to the present territorial limits of the city and to any area annexed henceforth during the term of this Franchise.

#### **Section 8-5 Liability and indemnification.**

Satellite Cable Services shall, at all times, keep in effect the following types of insurance coverage:

- A. Workmen's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the city.

- B. Property Damage Liability insurance to the extent of fifty thousand (50,000) dollars as to person and one hundred thousand (100,000) dollars as to any one accident, and personal injury liability insurance to the extent of one hundred thousand (100,000) dollars as to any one person and three hundred thousand (300,000) dollars as to any one accident.

Satellite Cable Services 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 Workman's Compensation Law which may be caused by the erection, maintenance, presence, use or removal of said attachments, poles, or other undertakings, within the city, or by any action of Satellite Cable Services, its agents, or employees. Satellite Cable Services shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, suits, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury, or damage. Satellite Cable Services shall also carry such insurance as it deems necessary to protect it from all claims under the Workmen's Compensation Laws in effect that may be applicable to Satellite Cable Services. The city shall give Satellite Cable Services prompt written notice of any such claims, demands, actions, suits, judgments, costs, expenses, or liabilities. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder.

**Section 8-6 Operation and maintenance of system.**

Satellite Cable Services 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.

**Section 8-7 Service to schools and city.**

Satellite Cable Services shall provide service to elementary or secondary school locations within the city at one (1) terminal junction for educational purposes upon request by the city or the school system and at no cost to the city or to 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.

Satellite Cable Services shall also provide the city, for connections to three (3) buildings to be elected by the city council, without charge, and one (1) terminal junction to each of said buildings at a location therein to be selected by the city.

**Section 8-8 Emergency use of facilities.**

In the case of any emergency or disaster, Satellite Cable Services shall, upon request of the city council, make available its facilities to the city for emergency use during the emergency or disaster.

**Section 8-9 Other business activities.**

Satellite Cable Services shall not engage in the business of selling, repairing, or installing television receivers, radio receivers, or accessories for such receivers with the city during the term of the Franchise.

**Section 8-10 Safety requirements.**

Satellite Cable Services 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.

### **Section 8-11 New developments.**

It shall be the policy of the city to amend this Franchise, upon application of Satellite Cable Services, when necessary to enable Satellite Cable Services to take advantage of any developments in the field of transmission of television and radio signals that will afford an opportunity more effectively, efficiently, or economically to 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 therein.

### **Section 8-12 Limitations on rights granted.**

- A. All transmission and distribution structures, lines, and equipment erected by Satellite Cable Services 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 join any of the said streets, alleys, or other public ways and places, and said poles or towers shall be removed by Satellite Cable Services whenever the city council reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places in the city.
- B. All transmission and distribution structures, lines, and equipment erected by Satellite Cable Services 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 city or public utility serving the city, or to interfere with new improvements the city may deem proper to make.
- C. In the maintenance and operation of their television transmission and distribution system in the streets, alleys, and other public places, and in the course of any new construction or addition to their facilities, Satellite Cable Services 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 Satellite Cable Services in the course of their operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boardings, and the boundaries shall be clearly designated by warning lights during periods of dusk and darkness.
- D. In case of disturbance of any street, sidewalk, alley, public way, or paved area, Satellite Cable Services shall, at its own cost and expense and in a manner approved by the city council, 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.
- 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, Satellite Cable Services, 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. 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.
- G. Satellite Cable Services 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 the same, and Satellite Cable Services shall have the authority to require such payment in advance. Satellite Cable Services shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

- H. Satellite Cable Services shall have the authority to trim trees overhanging 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 Satellite Cable Services, except that at the option of the city, such trimming may be done by it or under its supervision and direction at the expense of Satellite Cable Services.
- I. In all sections of the city where the cables, wires, or other like facilities of public utilities are placed underground, Satellite Cable Services shall place its wires, cables, or other like facilities underground to the maximum extent that existing technology reasonably permits Satellite Cable Services to do.
- J. Satellite Cable Services 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 Satellite Cable Services when required by the city by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishments 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 or proprietary capacity or other structure of public improvement. Provided, however, Satellite Cable Services shall in all cases have the privileges to abandon any property of Satellite Cable Services in place as hereinafter provided.
- K. 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 systems or property have 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, Satellite Cable Services shall promptly remove from the streets 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, Satellite Cable Services shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the city.
- L. Any property of Satellite Cable Services to be abandoned in place shall be abandoned in such a manner as the city may prescribe. Upon permanent abandonment of the property of Satellite Cable Services 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.

### **Section 8-13 Removal of facilities.**

Upon termination of service to any subscriber, Satellite Cable Services shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

### **Section 8-14 Transfer of franchise.**

The rights granted under this Franchise may be assigned or transferred by Satellite Cable Services. Provided, however, that the proposed assignee or transferee must show financial responsibility to the satisfaction of the city and must agree to comply with the provisions of this Chapter. The city's acceptance of the financial responsibility of the assignee or transferee shall not be unreasonably withheld.

### **Section 8-15 Payment to the city.**

During the term of the franchise granted hereunder and so long as Satellite Cable Services or its successors or assigns operate the Cable Television System, commencing from the date of institution of service to subscribers, Satellite Cable Services shall pay to the city annually three (3) percent of the annual gross subscriber revenue, as defined herein, of said Cable Television System as compensation for the said franchise.

Such payments by Satellite Cable Services to the 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 Satellite Cable Services 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 Satellite Cable Services. Such payment also does not affect the responsibility of Satellite Cable Services to collect state and local sales tax on the service provided.

Satellite Cable Services shall file with the city, within ninety (90) days after the expiration of any fiscal year of Satellite Cable Services during the term of the rights granted hereunder, a statement prepared by a Certified Public Accountant showing the gross subscriber revenues as defined herein. It shall be the duty of Satellite Cable Services 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. In no event shall any such payments be due and payable until the system is actually in operation with paying subscribers.

### **Section 8-16 Erection, removal, and common use of poles .**

- A. No poles or other wire-holding structures shall be erected by Satellite Cable Services 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 wireholding structure of Satellite Cable Services shall be a vested interest and such poles or structures shall be removed or modified by Satellite Cable Services at its own expense whenever the commission determines that the public convenience would be enhanced thereby.
- B. Satellite Cable Services has the right and authority to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public license and franchise within the corporate limits of the city, including Golden West Communications, Inc., to use such towers, poles, lines, cables, and other equipment and facilities, 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 Satellite Cable Services to allow Satellite Cable Services' 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 the number of new or additional poles constructed by Satellite Cable Services within the city may be minimized.
- C. Satellite Cable Services 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 Satellite Cable Services, insofar as it may be done without interfering with the free use and enjoyment of Satellite Cable Services' own wires and fixtures. The city shall hold Satellite Cable Services harmless from any and all claims, actions, causes of action, or damages caused by the placing of the city's wires or appurtenances upon the poles of Satellite Cable Services. 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 Satellite Cable Services is required to change or

replace poles or install new poles, the city shall compensate Satellite Cable Services for such additional expense.

#### **Section 8-17 Rates**

- A. Satellite Cable Services 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 CATV service, including installation charges.
- B. Before making any changes in the rates and charges to subscribers for basic CATV service, Satellite Cable Services shall file in writing with the city finance officer a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the city takes no action to set the proposed rate change for hearing or takes no other action to delay such changes, said proposed rate changes may become effective upon the expiration of the thirty (30) day notice period.
- C. If the city council sets the proposed rate change for hearing, said proposed rate change will not become effective until the city council has taken action by means of resolution.
- D. This provision does not limit the right of Satellite Cable Services to pass state and local sales tax or any specific copyright fees to the subscribers.

#### **Section 8-18 Complaint procedures.**

Complaints regarding the quality of service, equipment malfunctions, and similar matters shall first be directed to Satellite Cable Services' office. Should Satellite Cable Services fail to satisfy a complaint, it may then be directed to the finance officer for investigation. The complaining party and Satellite Cable Services shall be afforded a reasonable opportunity to present written statements of their position. The finance officer shall attempt to resolve the complaints but if this cannot be achieved, the finance officer shall submit a recommendation to the city council recommending that the complaint be dismissed or corrective action to be taken by Satellite Cable Services. Appeal from the commission's action may be made to the appropriate judicial or administrative forum.

#### **Section 8-19 Unauthorized receipt of service, tampering, and damage to property.**

It shall be unlawful for any person to obtain any cable television services from any cable television company, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment of said cable television company unless the same is done with the knowledge of and with the permission of the cable television company.

#### **NOTE:**

**Satellite Cable Services, Inc. transferred its Franchise to Mediacom Minnesota LLC on August 2, 2000. The Resolution approving this transfer was approved by the Menno City Council on September 6, 2000.**