

CHAPTER 12
COMMUNITY ANTENNA TELEVISION (“CATV”)

12-100 PURPOSE – COMMUNITY ANTENNA TELEVISION (“CATV”)

The City of Philip, by authority of SDCL 9-35 *et.seq.*, shall maintain exclusive jurisdiction by this ordinance to regulate, prohibit and consent to the construction, installation, operation, and maintenance of CATV Systems within the corporate limits of Philip. City may grant to any persons offering a CATV System (“Provider”) the nonexclusive right to erect, maintain and operate in, under, over, around, across the streets, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses and other public places in the City of Philip, South Dakota, and the subsequent additions thereto, towers, poles, lines, cables, wires and other apparatus or device for the purpose of transmission and distribution, by cable or other mode, of television and non-television signals (such non-television signals to include but not limited to FM radio programming, high-speed internet and telephony) to enable sale by Provider of its CATV service to inhabitants of said City and other various purposes, for a period not to exceed twenty (20) years regulating the same and providing for compensation to the City and prescribing penalties for violation. The purpose of this ordinance is otherwise to detail the basic requirements for a franchise and the terms and conditions for any other contractual arrangement thereafter deemed appropriate and consistent with state and federal law.

12-101 DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not consistent 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.

“CATV” or “CATV System” or “System” means “Community antenna television system,” which is further defined as a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or non-television, radio or other signals directly or indirectly off-the-air and transmit them to subscribers for a fee.

“Basic Cable Service” means the service tier which includes but is not limited to the retransmission of local broadcast, satellite or other signals.

“Cable operator” is any person who provides cable service over a cable system

“Cable service” is the transmission to subscribers of video programming or other programming service and the subscriber interaction, if any, which is required for the selection or used of such video programming or other programming, communication or internet service.

“Cable system” is a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service to multiple subscribers within a community. The term does not include a facility that serves subscribers without using the public right-of-way; a facility of a telecommunications company that provides telecommunication service as defined and regulated by SDCL chapter 49-31, except to the extent that the facility is used to transmit video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services.

“Cable Television Reception Service” means the delivery by the Franchisee to television receivers (or any other suitable type of electronic terminal or receiver of the electronic signals and other communication services carried over the Cable System.

“Cable Television System” or “Cable System” is a system utilizing certain electronic and other components or devices which deliver to subscribing members of the public various communication services including but not limited to television, internet, radio and telephone.

“City” is the City of Philip, South Dakota.

“Council” is the City Council of Philip, South Dakota.

“FCC” shall mean the Federal Communications Commission.

“Franchise” is an authorization, established by ordinance, issued by a franchising authority, which authorizes the construction and operation of a cable system.

“Franchisee” is any person granted a Franchise pursuant to the authority of this ordinance and otherwise in accordance with state and federal laws for the construction, maintenance and operation of a cable system.

“Franchising authority” is a municipality.

“Other programming service” is information that a cable operator makes available to all subscribers generally.

“Person” is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.

“Public, educational or governmental access facilities” is a channel capacity designated for public, educational and governmental use and the facilities and equipment for the use of such channel capacity.

“Subscribers” are those persons contracting to receive cable television reception services furnished under this Ordinance or under a subsequent Franchise grant.

“Video programming” is programming provided by, or generally considered comparable to programming provided by a television broadcast station.

12-102

GRANT OF NON-EXCLUSIVE AUTHORITY

1. The grant of any Franchise by the City to any Franchisee shall be for 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 Philip, 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 system, for the purpose of transmission and distribution of signals, including but not limited to audio, visual, electronic, electronic impulse and digital in order to furnish television and radio programs and various other communications

services to the public by what is commonly called a CATV System, for a period not to exceed twenty (20) years.

2. The right to use and occupy said streets, alleys public ways and places for any purposes stated herein or which may be set forth in any contractual arrangement hereafter shall not be exclusive.
3. Franchisee also has the right and authority to lease, rent or in any other manner, obtain the use of, and use within the corporate limits of grantor, wires, lines, poles, cross-arms, cables, appurtenances, fixtures and other apparatus of any and all holders of public permits, public licenses or franchises granted by the City or other public entity. Any such use shall be subject to the terms and conditions of the franchise granted by this Ordinance and subject to all existing and future ordinances, resolutions, regulations and franchise agreement of the City.
4. The terms and conditions of the franchise shall also be applicable to any facilities installed or operated by the Franchisee before the effective date of the franchise.

12-103 COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Franchisee shall, during the term hereof, except in those areas which have been preempted by the Cable Communications Policy Act of 1984, or acts amendatory thereto, or which are regulated by the FCC, be subject to all lawful exercise of the regulating and police powers of the City.

12-104 TERRITORIAL AREA INVOLVED

This Ordinance relates to the present territorial limits of the City and to any additional areas as may be specifically set forth in any contractual arrangement with Franchisee.

12-105 LIABILITY AND INDEMNIFICATION

Any Franchisee shall, at all times, keep in effect insurance coverages for Workers Compensation, Property Damage Liability, General Commercial Liability and such other insurances as are deemed by the City to be reasonable and appropriate under the specific terms of a Franchise Agreement and authorization.

Any Franchisee shall be required to 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 Workers Compensation law which may arise out of the erection, maintenance, presence, use or removal of said attachments or poles within the City, or by any act of the Franchisee, its agents or employees. Franchisee shall carry insurance in amounts sufficient 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, which amounts shall be established by the Franchise Agreement terms.

12-106 TECHNICAL STANDARDS

Franchise authorizations shall be governed by technical standards established by the FCC.

12-107 OPERATION AND MAINTENANCE OF SYSTEM

1. A Franchisee shall only deliver to any customer the signal of a television station that is permitted or authorized to be delivered by any CATV System operating in the City under the rules and regulations of the FCC or any successor thereof, as established by such commission from time to time.
2. A Franchisee shall make installations of a permanent and durable nature and installed in accordance with good engineering practices and comply with all existing and future

ordinances, resolutions, regulations and orders of grantor so as not to interfere in any manner with the right of the public or individual property owners. The system shall not interfere with the travel and use of public places or facilities by the public and during the construction, repair or removal thereof, shall not obstruct or impede traffic. Any transmission facilities of CATV System or utilized in connection with a system anywhere within the corporate limits of grantor, either on public or private property, shall consist of coaxial cables of low radiation characteristics, satisfactory to and approved by Rural Utilities Service (RUS).

3. A Franchisee shall be required to operate and maintain service so that all customers receive signals of good technical quality and full range of services. Repairs shall be made promptly. Any interruption of service shall only be 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.
4. In order to limit failure and malfunctions of CATV system to a minimum and that the same might be promptly corrected and at all times after notice of malfunction or failure, Franchisee shall consistently maintain an office, which shall be open during normal business hours of every day, Monday through Friday inclusive, which shall have a listed telephone.
5. All service requests and complaints shall be responded to within 24 hours of receipt. All failures and malfunctions of the system, shall be corrected within seventy-two (72) hours after notice of such failure or malfunction except or unless such failure or malfunction shall be over a substantial portion of grantee's system and shall have been caused by storm, fire, lightning, explosion, civil commotion or similar catastrophe.
6. Franchisee is authorized to make all necessary excavations in the streets, alleys, sidewalks and public grounds within the corporate limits of grantor, but such excavations shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the rights of the public as may be feasible. Franchisee shall restore all streets, alleys, sidewalk and public grounds to their original condition of safety and utility after excavation. In case any obstruction caused by Franchisee shall remain longer than five (5) days after notice to remove it, or in case of neglect by Franchisee, to safeguard any dangerous places, City may remove such obstruction or safeguard such dangerous place at the expense of the grantee.

12-108 SERVICE TO SCHOOLS AND CITY

The Franchisee shall provide to the City and to all public-school buildings within the City, one connection to each City and school building, for education purposes and at no cost to the City or the public-school system, upon request. Each such connection shall be made such that all services available through Franchisee's Cable System will be delivered to all sets or receiving device connected within each building.

12-109 EMERGENCY USE OF FACILITIES

Any and all CATV System facilities shall, in areas serviced, be made available without charge as a public service for use by the City or any other public agency performing civil defense or disaster services.

12-110 SAFETY REQUIREMENTS

The Franchisee 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.

12-111 LIMITATIONS OF RIGHTS GRANTED

Any grant of a Franchise may contain provisions limiting certain rights of Franchise under certain circumstances as may be established from time to time in more specific terms in a contractual arrangement with Franchisee.

12-112 OWNERSHIP AND REMOVAL OF FACILITIES

All cable and passive equipment for cable television reception or internet service of any other service provided under the Cable System that is installed by the Franchisee at a subscriber's location and not purchased or owned by the subscriber shall remain the property of Franchisee and Franchisee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Franchisee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his or her request.

12-113 TRANSFER OF FRANCHISE

The Franchisee shall not sell, transfer, lease, assign or dispose of in whole or in part either by force or voluntary sale, merger, consolidation or otherwise any Franchise without the prior consent of the City Council of City, expressed by resolution and then only under such conditions as may therein be prescribed.

12-114 FRANCHISE FEE

Effective October 1, 1985 and hereafter, the City does hereby impose upon Franchisee a franchise fee. Said fee shall be five percent (5%) of the Franchisee's monthly gross receipts of the Cable System collected from any subscriber who receives Franchisee's services within the boundaries of the City. Excluded from the gross receipts are installation costs, disconnect or reconnect fees and penalties and repair costs.

The franchise fee shall be tendered by Franchisee to the City Finance Office on a quarterly basis.

12-115 RATES

1. Franchisee shall, at all times, maintain on file with the City Finance Office a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including installation charges. Before making any changes in the rates and charges to subscribers for basic CATV service, Franchisee shall file in writing with the City Administrator a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change and comply with FCC rule 76.1603(b) and 76-1603(c) concerning notice to subscribers and City. Said rates shall be determined according to the FCC Rules and Regulations regarding rates.
2. This provision does not limit the right of Franchisee to pass along to the subscribers state and local sales tax, programming cost increase or any specific copyright fees.
3. This section is not applicable to rates for premium or pay service.
4. The monthly rate set forth in subsection 1 above shall be payable in advance.
5. The Franchisee shall not discriminate in rates, charges, service facilities, rules, regulations or any other respect, make or between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984 and FCC regulations and any acts amendatory thereto.
6. Grantee shall not, as to rates, charges, service, service facilities, rules, regulations or any other respect, make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, provided however, connection charges may be waived or modified during promotional campaigns of grantee.

12-116 MISCELLENEOUS

Franchisee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, must be approved by all appropriate governing or regulatory bodies.

12-117 MODIFICATION OF FCC RULES

Any modification or amendment of the rules of the FCC shall, to the extent applicable, be considered part of this Ordinance as of the effective date of such amendment, and shall be incorporated herein by specific amendments within one (1) year from the effective date of the amendment, or at the time of a Franchise Agreement approval, whichever occurs first.

12-118 UNAUTHORIZED CABLE USE

It shall be unlawful for any person or persons to obtain any cable television reception service, internet service or any other service from Franchisee, or any firm or private person by installing, rearranging or tampering with any facilities or equipment of Franchisee, unless the same is done with the prior written permission of the Franchisee. A violation of this section is a Class 2 misdemeanor.

12-119 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, or is superseded or preempted by FCC regulation, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.