

ORDINANCE #704

AN AMENDMENT TO ORDINANCE #430, TITLE 10, CHAPER 10.01 – CABLE TELEVISION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HARTFORD, SOUTH DAKOTA THAT THE FOLLOWING CHAPTER OF ORDINANCE #430 IS HEREBY AMENDEMENT TO READ AS FOLLOWS:

CHAPTER 10.01 – CABLE TELEVISION

10.0101 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 singular number include the plural number.

- A. "Cable Television System," "Cable System" or "CATV" shall mean a system utilizing coaxial cable and certain electronic and other components which deliver to subscribing members of the public various communications services.
- B. "FCC" shall mean Federal Communications Commission.
- C. "Grantee" shall mean Goldenwest Cablevision Inc., or an affiliate or successor in accordance with the provisions of this Franchise.
- D. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Franchise by Grantee.
- E. "Cable Television Reception Service" shall mean the simultaneous delivery by the Grantee to television receivers or any other suitable type of audio-video communications receivers of the signals of over-the-air television broadcast stations licensed by the Federal Communications Commission and authorized to be carried over said system; and such additional closed-circuit channels at the option of Grantee.
- F. "Affiliate" or "Affiliated Company" shall mean a corporation, partnership or other business entity which is wholly owned by the same person or persons who own Goldenwest Cablevision, Inc.
- G. "City" means the City of Hartford, South Dakota, a municipal corporation.

10.0102 Qualifications of Grantee and Grant of Nonexclusive Authority. Whereas the City has approved of the legal, character, financial, technical and other qualifications of the Grantee and the adequacy and feasibility of the Grantee's construction arrangements as part of a full public proceeding affording due process, including notice to all interested persons and members of the public, there is hereby granted by the City 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 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 impulses in order to furnish television and radio programs to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the purposes herein set forth.

10.0103 Duration and Acceptance of Franchise. The Franchise granted the Grantee herein shall be deemed effective June 1, 2021 and shall be reviewed every three years and terminate May 31, 2031, subject to renewal for periods of reasonable duration on the same terms and 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 Federal Communications Commission. No renewal hereof shall be granted unless authorized by the City following a public hearing. Grantee shall be awarded a franchise renewal provided its applications shows that its CATV service during the preceding franchise period has reflected material compliance with the terms of this Franchise Ordinance and a good faith effort to serve the needs and interests of the service area.

10.0104 Compliance with Applicable Laws, Regulations, Ordinances and Codes.

- A. The Grantee shall at all times, operate and maintain its Cable Television System in full compliance with the rules, regulations and standards of the FCC and any applicable rules, regulations and standards of the State of South Dakota.
- B. The Grantee shall 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.

10.0105 Territorial Area Involved. This Franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise.

10.0106 Liability and Indemnification. Grantee shall at all times keep in effect the following types of insurance coverage:

- A. Workers Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Hartford.
- B. Property Damage Liability insurance to the extent of One Hundred Thousand Dollars (\$100,000.00) as to any person and Three Hundred Thousand Dollars (\$300,000.00) as to any one accident and personal injury liability insurance to the extent of Three Hundred Thousand Dollars (\$300,000.00) as to any one person and Five Hundred Thousand Dollars (\$500,000) as to any one accident.

Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including

payments made under any Workers Compensation law which may be caused by the erection, maintenance, use or removal of any of their attachments, poles or other undertakings within the City, or by any action of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, suits, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workers Compensation laws in effect that may be applicable to Grantee. The City shall give the Grantee 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. The City retains the right to change the insurance requirements herein by proper resolution after prior notice to Grantee and a hearing thereon.

10.0107 Operation and Maintenance of System.

- A. The Grantee shall maintain an office which shall be open during all usual business hours for the receipt of sums due by its subscribers and shall provide for regular billing of accounts, have a locally listed telephone and be so operated that complaints and requests for repairs for adjustments may be received at any time.
- B. 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.
- C. The Grantee shall provide for safe, adequate and prompt service for its facilities.

10.0108 Service to Schools and City. The Grantee shall provide service to elementary or secondary school locations within the City with one 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. The Grantee shall also provide service, within city limits, with one terminal junction to any city owned facility and the fire station upon request at no cost to the City or the Hartford Area Fire and Rescue, Inc.,

10.0109 Emergency Use of Facilities. In the case of any emergency or disaster the Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster.

10.0110 Safety Requirements. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

10.0111 New Developments. It shall be the policy of the City to consider the amendment of this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of

television and radio signals which will afford it an opportunity 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 herein.

10.0112 Limitations of Rights Granted.

- A. All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys, or other public ways and places, and said poles or fixtures shall be removed by Grantee whenever in the opinion of the City Council of the City of Hartford the same restrict or obstruct the operation, maintenance, construction or reconstruction of any streets or public places in the City of Hartford.
- B. 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 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 Grantees 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 Grantees 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.
- D. In case of disturbance of any street, sidewalk, alley, public way, or paved areas the Grantee shall, at its own cost and expense and in manner approved by the City Council, replace and restore such street, sidewalk, alley, public ways or paved area 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, the Grantee, upon reasonable notice by the City, shall remove, relate, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- F. All installations of equipment shall be of a 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 owners 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.

- G. 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 reasonable expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
- H. The Grantee shall have the authority to trim trees overhanging upon the streets, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, 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 the Grantee.
- I. In all sections of the City where the cables, wires or other like facilities of public utilities are placed underground the Grantee shall in the future place its wires, cables or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.
- J. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street or public place, any property of Grantee when required by the City by reason of traffic conditions, safety, street vacation, vacation of right of way, 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 agencies when acting in a governmental or proprietary capacity or other structure of public improvement; provided, however, that Grantee shall in all such cases have the privilege to abandon any property of Grantee 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 canceled or have expired, Grantee 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, Grantee 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 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.

10.0113 Removal of Facilities Upon Request. Upon termination of service to any subscriber the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

10.0114 Transfer of Franchise. The rights granted under this ordinance may be assigned or transferred by the Grantee, 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 ordinance. The City's acceptance of the financial responsibility of the assignee or transferee shall not be unreasonably withheld.

10.0115 Payment to the City. During the term of the franchise granted hereunder and so long as Grantee or its successors or assigns operate the Cable Television System, commencing from the date of institution of service to subscribers, Grantee shall pay to the City annually the maximum percent allowed by FCC regulations or law of the annual "gross subscriber revenue", as defined herein, of said Cable Television System as compensation for the said franchise.

"Gross subscriber revenues". Gross subscriber revenues shall include, but are not limited to, all revenue received from basic cable and expanded basic cable, pay cable, digital services, high definition services, digital video recorder services, video on demand services, and any services added that are classified as cable services under federal law.

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 of Hartford 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.

Grantee shall file with the City, within ninety (90) days after the expiration of any fiscal year of Grantee during the term of the rights granted hereunder, a statement prepared by a Certified Public Accountant showing the gross subscriber revenue as defined herein. It shall be the duty of Grantee to pay to the City within fifteen (15) days after the time for filing such statement.

10.0116 Erection, Removal, and Common Use of Poles.

A. No poles or other wire-holding structures shall be erected by the Grantee without prior approval from the City Engineer with regard to locations, heights, 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 City Council determines that the public convenience would be enhanced thereby.

B. 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 another manner obtain the use of towers, poles, lines, cables, and other equipments and facilities from any and all holders of public licenses and franchises within the corporate limits of the City of Hartford 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 of Hartford 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 the number of new or additional poles constructed by Grantee within the City may be minimized.

- C. Grantee shall grant 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 claims, actions, causes of actions 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 its poles Grantee is required to change or replace poles or install new poles, the City shall compensate Grantee for such additional expense.

10.0117 Rates.

- A. Grantee shall at all times maintain on file with the City Finance Officer a schedule setting forth all rates and charges to be made to subscribers for any service, including installation charge.
- B. This provision does not limit the right of Grantee to pass along to the subscriber state and local sales tax or any specific copyright fees.

10.0118 Complaint Procedures. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy a complaint, it may then be directed to the City Administrator for investigation. In response to a complaint, Grantee shall be afforded a reasonable opportunity to present written statements of its position. The City Administrator shall attempt to resolve the complaints, but if this cannot be achieved, the City Administrator shall submit a recommendation to the City Council recommending: (1) the complaint be dismissed, or (2) corrective action be taken by Grantee. Appeal from the City Council's action may be made to the appropriate judicial or administrative forum.

10.0119 Compliance with FCC Franchise Standards. Pursuant to applicable FCC standards the following recitations and provisions are set forth:

- A. Grantee's legal, character, financial, technical and other qualifications and the adequacy and feasibility of its construction arrangements, have been approved by the City Council of the City of Hartford after consideration in a full public proceeding, affording due process to all interested parties.
- B. The initial franchise period of this agreement shall be ten (10) years in duration and the renewal franchise periods shall be for a length of time agreed upon by both parties. The franchise granted by this agreement shall be reviewed every three years.

- C. The City Council has specified guidelines in charging rates. No changes in rates charged to subscribers shall be made except as they shall be deemed approved by the City Council as provided herein as governed by FCC Regulations.
- D. The franchise fee shall be the maximum percent allowed by FCC regulations or law of Grantee's "gross subscriber revenues" per year from cable television operations in the City.

10.0120 Grantee Rules.

- A. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions covering the conduct to this business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Ordinance.
- B. All such rules, regulations, terms and conditions promulgated under 10.0120 (A), shall not be in conflict with the provisions hereof, or applicable federal or state law or rules promulgated by the City in the exercise of its regulatory authority granted hereunder.
- C. One copy of all such rules, regulations, terms and conditions promulgated under 10.0120 (A) together with any amendments, additions or deletions thereof, shall be kept currently on file with the City Finance Officer, and another copy thereof shall be maintained for public inspection during normal business hours at Grantee's office in the City; no such rules, regulations, terms, conditions or amendments, additions or deletions thereto shall take effect unless and until so filed and

10.0121 Unauthorized Cable Tapping. It shall be unlawful for any person or persons 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. Any person or persons found guilty of a violation of any of the provisions of this Section shall be deemed guilty of a misdemeanor.

10.0122 Separability.

- A. 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.
- B. 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.

10.0123 Publication. Grantee shall pay to the City a sum of money sufficient to reimburse it for all expenses incurred by it in connection with the publication and passage of this

ordinance and the rights granted to Grantee hereunder. Such payment shall be made by Grantee to City within thirty (30) days after City shall furnish Grantee with a written statement of such expense.

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.

10.0124 Ordinances Repealed. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Dated this ____ day of _____, 2021.

Mayor, Jeremy Menning

ATTEST:

Finance Officer, Karen Wilbur

First Reading: February 16, 2021
Second Reading and Adoption: March 2, 2021
Publication: March 12, 2021
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