

ORDINANCE NO. 754

AN ORDINANCE AMENDING CERTAIN SECTIONS OF ORDINANCE #480 OF THE CITY OF BOX ELDER MUNICIPAL CODE

WHEREAS, the City of Box Elder is entitled to five percent of a cable operator's gross revenue over a twelve-month period, known as a franchise fee, as provided by 47 U.S.C.A. § 542; and

WHEREAS, the August 1st, 2019 FCC *Third Report and Order* states that cable service given to public buildings, without charge, as part of a nonexclusive franchise agreement will fall under the definition of a franchise fee; and

WHEREAS, the fair market value of cable services provided to public buildings will now be included as part of the cable operator's gross revenue; and

WHEREAS, Ordinance #480 grants cable operators a nonexclusive area cable communications franchise by the City of Box Elder; and

WHEREAS, Ordinance #480 contains provisions that state cable operators will provide the City of Box Elder with cable service to its public buildings without charge; and

WHEREAS, it is no longer in the interest of Box Elder to receive cable service to its public buildings; and

WHEREAS, the City of Box Elder wishes to receive the full amount possible of the franchise fee due by cable operators; and

WHEREAS, any grammar and spelling errors in City Ordinances should be rectified.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the City of Box Elder, that the following Sections of Ordinance #480 of the City of Box Elder Municipal Code be amended to read as follows (new language shall be indicated by underscore, and language to be deleted shall be indicated by strike-through):

ORDINANCE# 480
BOX ELDER CABLE TELEVISION

AN ORDINANCE GRANTING A NONEXCLUSIVE CABLE COMMUNICATIONS FRANCHISE BY THE CITY OF BOX ELDER TO A GRANTEE DESIGNATED IN A RESOLUTION PASSED BY THE CITY OF BOX ELDER CITY COUNCIL FOR A PERIOD OF FIFTEEN (15) YEARS REGULATING THE SAME AND PROVIDING COMPENSATION TO THE CITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOX ELDER, SOUTH DAKOTA: CABLE TELEVISION FRANCHISES WILL BE GRANTED BY THE CITY BY RESOLUTION PURSUANT TO THIS ORDINANCE TO A GRANTEE.

SECTION I. - TITLE

This Ordinance shall be known and may be cited as the "Box Elder Cable Television Ordinance."

INDEX

SECTION I. - TITLE
SECTION II. - DEFINITIONS
SECTION III. - GRANT OF NON-EXCLUSIVE AUTHORITY
SECTION IV. - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES
SECTION V. - TERRITORIAL AREA INVOLVED
SECTION VI. - LIABILITY AND INDEMNIFICATION
SECTION VII. - GENERAL SYSTEM SPECIFICATIONS
SECTION VIII. - TECHNICAL STANDARDS
SECTION IX. - OPERATION AND MAINTENANCE OF SYSTEM
SECTION X. - SERVICE TO SCHOOLS AND CITY
SECTION XI. - EMERGENCY USE OF FACILITIES
SECTION XII. - SAFETY REQUIREMENTS
SECTION XIII. - LIMITATIONS ON RIGHTS GRANTED
SECTION XIV. - OWNERSHIP AND REMOVAL OF FACILITIES
SECTION XV. - ASSIGNMENT OF RIGHTS
SECTION XVI. - PAYMENT TO THE CITY
SECTION XVII. - DURATION AND RENEWAL OF ORDINANCE
SECTION XVIII. - ERECTION, REMOVAL AND COMMON USE OF POLES
SECTION XIX. - RATES
SECTION XX. - MISCELLANEOUS
SECTION XXI. - REQUIRED EXTENSIONS OF SERVICE
SECTION XXII. - MODIFICATION OF OBLIGATIONS
SECTION XXIII. - SEVERABILITY
SECTION XXIV. - EFFECTIVE DATE AND ORDINANCE REPEAL
EXHIBIT A buildings listed will receive Cable Service and Data Service
EXHIBIT B buildings that will receive Cable services one (1) terminal
EXHIBIT C - ACCEPTABLE USE POLICY

SECTION II. - DEFINITIONS

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

1. "Basic Cable Service" means the service tier that includes the retransmission of local broadcast signals.
2. "City" is the City of Box Elder, South Dakota.
3. "City Council" is the City Council of Box Elder, South Dakota.
4. "Cable Television System" or "Cable system," 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 telecommunications service as defined and regulated by 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.

5. "Cable Service," the one-way transmission to subscribers of video programming or other programming service and the subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
6. "FCC" shall mean Federal Communications Commission.
7. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
8. "Grantee" is a legal entity licensed to do business in South Dakota who is granted a Franchise by resolution in accordance with this Ordinance or, anyone who succeeds the Grantee in accordance with the revisions of this ordinance and the Resolution.
9. "Subscribers" are those persons contracting to receive cable television reception services furnished under this ordinance by Grantee.
10. "Other programming service," information that a cable operator makes available to all subscribers generally.

SECTION III - GRANT OF NON-EXCLUSIVE AUTHORITY

There is hereby granted by the City to any Grantee approved by the City Council by resolution, and to its successors, assigns or designees, 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 Box Elder, 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 television system, for the purpose of transmission and distribution of audio, visual, electronic and electric impulses in order to furnish television and radio programs and various other data and communications services to the public for a period pursuant to Resolution, commencing from and after the effective date of this Ordinance. All Grantees shall be subject to the terms and conditions of this ordinance.

SECTION IV - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Grantee shall, during the term of any franchise granted, except in those areas that have been preempted by the Cable Communications Policy Act of 1984, as amended, or The Telecommunications Act of 1996, as amended, or that are regulated by the Federal Communications Commission, be subject to all lawful exercise of the regulating and police powers of the City.

SECTION V - TERRITORIAL AREA INVOLVED

This Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of this Ordinance. The Franchise granted by resolution may be limited to all or a portion of the city limits. However, any Franchise granted to a limited area may not be on terms substantially more favorable than any other franchise previously granted. (See SDCL 9-35-27.) Any resolution granting a franchise for an area less than the City limits shall state the reason therefore in the resolution. The limits set forth in the franchising resolution cannot be changed for the term of the agreement. All resolutions made to service this Ordinance will state the expiration date.

SECTION VI - LIABILITY AND INDEMNIFICATION

Grantee shall, at all times, keep in effect the following types of minimum insurance coverage:

- (a) Worker's Compensation upon its employees and required of its contractors and subcontractors engaged in any manner in the installation or servicing of its plant and equipment within the City of Box Elder, South Dakota.
- (b) Commercial general liability insurance to the extent of one million dollars (\$1,000,000.00) and personal injury liability insurance to the extent of one million Dollars (\$1,000,000.00) as to each occurrence and one million Dollars (\$1,000,000.00) aggregate. Automobile bodily injury and property damage liability combined two Million Dollars (\$2,000,000.00) each occurrence.

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 Worker's Compensation law which may arise out of their erection, maintenance, use or removal of said attachments or poles within the City, or by any other act 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, 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 Worker's Compensation laws in effect that may be applicable to Grantee. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be deposited with and kept on file by the City. The damages or penalties, referred to herein, shall include, but shall not be limited to, damages arising out of copyright, infringements, and all other damages arising out of the installation, operation or maintenance of the Cable Television System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

SECTION VII - GENERAL SYSTEM SPECIFICATIONS Grantee will construct, maintain, and operate a system with a minimum capacity of thirty-five (35) channels.

SECTION VIII - TECHNICAL STANDARDS

Grantee shall be governed by technical standards established by the FCC.

SECTION IX - OPERATION AND MAINTENANCE OF SYSTEM

1. The Grantee shall render 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 sufficient employees to provide safe, adequate, and prompt service (next business day) for its facilities.
3. Grantee shall, except as is hereinafter stated, provide the City Council, through the Finance Officer, with 30 days advance written notice of any change in channel assignment for a program service or of a change in the video programming service. Grantee shall not be required to give 30 days notice where the change is made for reasons beyond the control of Grantee but Grantee shall give such notice as is reasonable under the circumstances. Service of the notice shall be deemed to have been completed on the date the notice is mailed.

SECTION X - SERVICE TO SCHOOLS AND CITY

All Grantees are required to provide services to those designated sites within 200 feet of their lines. The Grantee shall allocate one channel to the City as an educational or governmental access channel. Grantee shall assist the City in obtaining the necessary licenses and frequency clearance to enable the City to use said channel.

SECTION XI - EMERGENCY USE OF FACILITIES

Grantee shall, upon request of the Mayor or his designee, make available its facilities to the City for emergency use during the emergency or disaster. If the City wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to the City and Grantee and provides Grantee with the necessary equipment for such system, Grantee will permit the system to be used on the cable system. In the event of any emergency, Grantee shall use its best judgment and due care to effectuate whatever

repairs may be necessary while minimizing any damage to any Public Way or private property and Grantee shall promptly inform appropriate City Personnel of the action taken.

SECTION XII - SAFETY REQUIREMENTS

The Grantee 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 XIII - LIMITATIONS ON RIGHTS GRANTED

1. 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 adjoin any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Grantee whenever the City Public Works Director or Engineer reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places in the City.
2. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable Ordinances and regulations of the City affecting electrical installation, which may be presently in effect, or changed by future ordinances. The City shall always deal with the Grantee and not their hired contractors during times of repair, maintenance and new construction, regardless of the size of the project. In addition, the City, at its discretion, may require a performance bond from the Grantee's hired contractors for projects when the cost of a project exceeds \$25,000.00.
3. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the City Public Works Director or Engineer, 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. Grantee shall not be required to pay a fee for street openings.
4. If at any time during the period of this Ordinance 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, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
5. The Grantee shall, on the request of any person holding a building moving permit issued by the City or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The 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 follow the Grantee's written and established policy as long as there is at least forty-eight (48) hours advance notice.
6. The Grantee shall have the authority to trim trees that are overhanging the 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 the Grantee. Grantee shall notify the City before trimming.
7. Grantee 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 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 shall in all cases have the privileges and be subject to the obligations to abandon any property of Grantee in place as hereinafter provided.

8. In all sections of the City where the City designates an area where all presently above ground services are to be placed underground, the Grantee shall place its wires underground on the same time schedule and on the same conditions that are applicable to the providers of other above ground services in the designated areas. Where the City has not made such a designation, if a subscriber requests that his cable television service drop be placed underground, the cost of placing the service underground and the surface restoration costs shall be paid by the subscriber. The subscriber shall also be responsible for the payment of the difference between the cost of a repair had the service drop been above ground and the cost of the underground repair, and, in addition, the cost of the surface restoration. If Grantee places the service underground for its convenience rather than at the subscriber's request, or does so pursuant to a City designation as provided herein, then the cost of doing so as well as the cost of restoration and repairs shall be the sole obligation of the Grantee.
9. 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 system or property has 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, Grantee shall, subject to the rights of the City to acquire or transfer the system as specified in Section XVII, 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.
10. 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.

SECTION XIV - OWNERSHIP AND REMOVAL OF FACILITIES

Except as otherwise agreed in writing at the time of installation, all cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Grantee shall have the right, at anytime, to disclaim any further ownership rights to the interior wiring and specified equipment and fittings at a subscriber's residence or other building by giving written notice to the subscriber. Once such a notice is given, the interior wiring and any equipment or fitting specified in the notice shall become the property of the subscriber without any payment obligations on the part of the subscriber. Provided, however, that Grantee shall have the right, as long as it is providing service to the premises, to use said interior wiring and specified equipment without charge. Upon termination of service to a subscriber, the Grantee shall, upon the subscriber's request and subject to FCC regulations, promptly remove all its above ground facilities and equipment that are external to the building from the premises of such subscriber.

SECTION XV - ASSIGNMENT OF RIGHTS

The Grantee shall not assign any rights granted under this Ordinance to another person without prior approval of the City Council, which approval shall not be unreasonably withheld. Any assignment shall incorporate the conditions of assignment in a new resolution.

SECTION XVI - PAYMENT TO THE CITY

During the term of the rights granted hereunder and as long as the Grantee operates said system, the Grantee shall pay as compensation to the City for the rights granted herein, a sum equal to five percent (5%) of the annual total gross subscriber revenues of the cable system. "Gross subscriber revenues" shall consist of those revenues received by the Grantee from the monthly service charges paid by subscribers receiving service under this agreement for basic cable service and premium pay services, such as HBO, Movie Channel, etc. In addition, gross subscriber revenues shall include revenues received by Grantee from monthly service charges paid by subscribers for Internet services to the extent that applicable federal or state law, regulation or court decisions do not prohibit Grantee from providing such services through the cable system or otherwise prohibit the inclusion of such revenues in determining fees payable to the City hereunder.

Gross subscriber revenues shall not include revenues received as installation charges, and fees for reconnections, inspections, repairs or modifications of any installation, all State and Federal Taxes and fees (including Franchise Fees) relating thereto. The payments that Grantee makes to the City shall be in lieu of any occupation tax, license tax, or similar levy by the City and shall be paid on monthly basis based on previous month's actual collections along with a report of those collections.

This amount payable by the Grantee to the City shall be the sole amount payable for all of its rights under this Ordinance including, but not limited to, the use of the streets and other facilities of the City in the operation of the Cable System and for the municipal supervision thereof and shall be in lieu of another occupational tax. Notwithstanding the annual gross receipts fee or tax payable hereunder, if the Grantee is legally obligated to collect or pay any sales tax or other taxes, the Grantee shall have the right to charge the subscribers an additional amount equal to such tax.

The Grantee shall make available for inspection by authorized representatives of the City, its books, accounts and financial records at reasonable times and upon reasonable advance notice for the purpose of verifying payments conferred by this section. Grantee shall not be required to maintain any books or records for franchise compliance purpose for longer than three years. Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. Grantee shall not be required to provide subscriber information in violation of applicable law regarding subscriber privacy.

SECTION XVII- DURATION AND RENEWAL OF FRANCHISE

The rights granted to a Grantee herein shall, except as provided in this Section, terminate fifteen (15) years from the effective date of the granted franchise which shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984, as amended, or The Telecommunications Act of 1996, as amended, applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, the franchise shall remain in effect even if the original fifteen (15) year term has expired. If a franchise is revoked for cause by the City, the transfer of Grantee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984, as amended.

SECTION 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 designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. 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 or its designated representative determines that the public convenience would be enhanced thereby.
2. Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City

Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

3. Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the City Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the City Council determines provided the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

SECTION XIX- RATES

1. 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 all tiers of service, including installation charges. Notice of changes to such rates shall be provided to the City Council, through the City Finance Officer, thirty (30) days prior to effective date of change.
2. During the term hereof, Grantee shall comply with the rate regulation rules of the Federal Communications Commission. The City reserves the right to regulate rates in a manner consistent with the rate regulations rules of the Federal Communications Commission.

SECTION XX - MISCELLANEOUS

1. Grantee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, must be approved by the City Council after consideration in a full public proceeding affording due process to all interested persons.
2. 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 Finance Officer for investigation. The complaining party and Grantee shall be afforded a reasonable opportunity to present written statements of their position. The City Finance Officer shall attempt to resolve the Complaints and, if this cannot be achieved, he or she shall submit a recommendation to the City Council, which shall either (1) dismiss the complaint, or (2) specify corrective steps to be taken by Grantee or the subscriber. Appeal from the City Council's action may be made to the appropriate judicial or administrative forum.

SECTION XXI - REQUIRED EXTENSIONS OF SERVICE

The System as constructed as of the date of the passage and final adoption of this Franchise, substantially complies with the material provisions hereof. Whenever the Grantee shall receive a request for service from at least 15 subscribers within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its System to such subscribers at no cost to said Subscribers for System extension if technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the System, or as provided for under Section XI: EMERGENCY USE OF FACILITIES.

SECTION XXII - MODIFICATION OF OBLIGATIONS

In addition to any other remedies provided by law or regulation, Grantee's obligations under this ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984, as it now exists, or as hereafter amended.

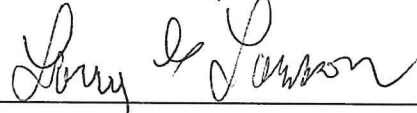
SECTION XXIII - SEVERABILITY

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

Federal Communications Commission 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.


PASSED AND APPROVED ON FIRST READING this 17th day of September 2024.

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this 1st day of October 2024.

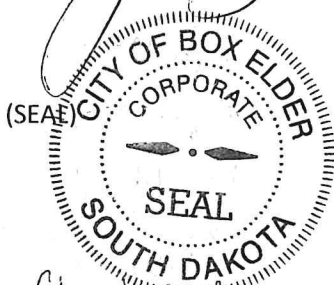


Mayor

ATTEST:



Chief Financial Officer, City Administrator



ATTESTATION

I, Chris Korsch, the City Clerk of the City of Box Elder, South Dakota, do hereby attest and state the above ordinance was published in the manner required by law and that all procedures required by the State of South Dakota law were complied with. This ordinance shall become effective on the twentieth day after its publication, that date being: November 1, 2024.



City Clerk