

ORDINANCE NO. 264

AN ORDINANCE GRANTING A FRANCHISE TO “KLC Cable TV Co.,” A SOUTH DAKOTA COMPANY; ITS SUCCESSORS AND ASSIGNS, TO ERECT, OWN, OPERATE, AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY OF ALEXANDRIA, SOUTH DAKOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; AND PROVIDING FOR CITY REGULATION AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALEXANDRIA, SOUTH DAKOTA:

WHEREAS, KLC Cable TV Co., a South Dakota Company, has petitioned for the nonexclusive right to construct and operate a community antenna television system in the City of Alexandria, South Dakota.

NOW, THEREFORE, the City of Alexandria, South Dakota, hereby grants to KLC Cable TV Co., or an affiliated company the rights under this Cable Television Franchise Ordinance.

I.
SHORT TITLE

This Ordinance shall be known and may be cited as the “Alexandria Antenna Franchise Ordinance.”

II.
DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

1. “City” shall mean the City of Alexandria, South Dakota.
2. “City Council” shall mean the City Council of Alexandria, South Dakota.
3. “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 cable TV services.
4. “FCC” shall mean Federal Communications Commission.
5. “Person” shall mean any person, firm, partnership, association, corporation, or organization of any kind and any other legally recognized entity.

6. "Grantee" shall mean KLC Cable TV Co., an affiliate or successor in accordance with the provisions of this Franchise.
7. "Subscribers" are those person contracting to receive cable television reception services furnished under this Franchise by Grantee.
8. "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.
9. "Affiliate" or "affiliated company" means a corporation, partnership, or other business entity which is wholly owned by the same person or persons who own KLC Cable TV Co., or its parent company.

III.
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 there 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.

IV.
DURATION AND ACCEPTANCE OF FRANCHISE

The Franchise granted the Grantee herein shall terminate 20 years from date of grant, subject to renewal for periods of reasonable duration of 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 or other applicable rules 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.

V.

COMPLIANCE WITH APPLICABLE LAWS
REGULATIONS, ORDINANCES AND CODES

1. 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.
2. 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.

VI.

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 the Franchise.

VII.

LIABILITY AND INDEMNIFICATION

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

- (a) Workman's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Alexandria.
- (b) Property Damage Liability to the extent of \$300,000.00 as to any person and \$500,000.00 as to any accident, and personal injury liability insurance to the extent of \$300,000.00 as to any one person and \$500,000.00 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 Workman's Compensation law which may be caused by the erection, maintenance, use or removal or any of their attachments, poles, or other undertakings, within the City, or by any action of Grantee, its agents 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 Workman's 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, judgment 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.

VIII.
OPERATION OF MAINTENANCE OF SYSTEM

1. 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 repair for adjustments may be received at any time.
2. That Grantee shall render safe and efficient service, make repairs promptly, and interrupt service 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.
3. The Grantee shall provide for safe, adequate, and prompt service for its facilities.

IX.
SERVICE TO SCHOOLS AND CITY

The Grantee shall provide service to elementary and secondary school locations within the City (one terminal junction to each) for educational purposes and to the City, on terminal junction, 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.

X.
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.

XI.
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 failure and accidents which are likely to cause damages, injuries, or nuisances to the public.

XII.
NEW DEVELOPMENTS

It shall be the policy of the City liberally to amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field or 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.

XIII.
LIMITATIONS OF 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 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 Alexandria the same restrict or obstruct the operation or location of any future streets or public places in the City of Alexandria.

2. All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be located, erected, and maintained so as not to endanger or interfere with the lives of persons, or to interfere with any installations of the City or of a public utility serving the City or to interfere with new improvements the City may deem proper to make.

3. In the maintenance and operation of its television transmission and distribution system in the streets, alleys, and other public places, and in the course of any new construction or addition to its facilities, Grantee shall proceed so as to cause the least possible inconvenience to the general public: any opening or obstruction in the streets or other public places made by Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

4. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own expense and cost and in a manner approved by the City Council, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.

5. 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, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

6. All installations of equipment shall be of permanent nature, durable and installed in accordance with good engineering practices, and of sufficient height to comply with all existing City regulations, ordinances, and state laws so as not to interfere in any manner with the right of the public or individual property owner, and any equipment installed in a public way or place shall not interfere with the usual travel on such public way or usual use of such public place by the public and during the construction, repair, or removal thereof, shall not obstruct or impede traffic.

7. The Grantee shall, on the request of any person, 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 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.

8. The Grantee shall have the authority to trim trees overhanging upon 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, 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.

9. In all Sections of the City where the cable 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.

10. 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 be 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 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 privileges to abandon any property of Grantee in place as hereinafter provided.

11. 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 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 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 the area from which such property has been removed to a condition satisfactory to the City.

12. Any property of Grantee to be abandoned 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.

XIV.
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.

XV.
TRANSFER OF FRANCHISE

The Grantee shall not assign or transfer any rights granted under this Ordinance to any person, company, or corporation without the prior approval of the City Council of the City of Alexandria, which approval shall not be unreasonable withheld; provided however, the Grantee shall have the right to assign its rights under this Ordinance to an affiliated company without further approval of the City Council.

XVI.
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 following percentages of the "annual gross subscriber revenue", as defined herein, of said Cable Television System as compensation for the said franchise:

During each year of actual operation-

"Gross subscriber revenue" shall include those revenues derived from the monthly service charge paid by the subscribers for basic Cable Television reception service. Subscriber revenues shall not include any state or federal taxes relating to services provided by or fees charged by Grantee, or revenues received as installation charges and fees for reconnections, inspection, repairs, or modifications of any installment.

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 Alexandria 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, 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.

XVII. ERECTION, REMOVAL, AND COMMON USE OF POLES

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City Engineer with regard to location, height, type or any other pertinent aspect. However, no locations of any pole or wire-holding structure of the Grantee shall be 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.

2. There is hereby granted to the extent that the City is authorized to do so, the right and authority to Grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises within the corporate limits of the City of Alexandria, including telephone and electric service franchises, 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 Alexandria that all other holders of public licenses and franchises within the corporate limits of the City shall cooperate with Grantee to allow Grantee joint usage of its poles and pole-line facilities whenever possible or wherever such usage does not interfere with the normal operation of such poles and pole lines so that the number of new or additional poles constructed by Grantee within the City may be minimized.

3. Grantee 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 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 action, or damages caused by the placing of the City's wires or appurtenances upon the poles of Grantee. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the City's joint use of their poles, Grantee is required to change or replace poles or install new poles, the City shall compensate Grantee for such additional expense.

XVIII.
RATES

1. Grantee shall at all times maintain on file with the Municipal Finance Officer a schedule setting forth all rates and charges to be made to subscribers for CATV service, including installation charges.

2. The rates and charges for services to subscribers shall be initially set by Grantee, subject to any applicable rules and regulations of federal and state agencies and subject to approval of the City Council. Before putting into effect initial rates and charges or making any changes in the rates and charges to subscribers for CATV service, Grantee shall file in writing with the Municipal Finance Officer of the City of Alexandria the initial rates and charges or any new proposed rate change at least thirty (30) days in advance of the proposed effective date for such initial rates or rate change. If the City Council takes no action to set the proposed initial rates or rate change for hearing or takes no other action to delay such initial rates or changes, said proposed initial rates or rates changes may become effective upon the expiration of the thirty (30) day notice.

3. If the City Council sets the proposed initial rates or rate change for hearing, said proposed initial rates or rate changes will not become effective until the City Council has taken action by means of a resolution. Any initial or changed rates and charges shall be set in accordance with lawful rate setting procedures in amount calculated to yield revenues at least sufficient to enable Grantee to pay and discharge all expenses of operation, including taxes and fees, when due, and also to make any payments with respect to principal and interest on indebtedness plus an amount sufficient to enable Grantee to earn a reasonable return on its investment in cable television facilities and related properties.

4. This provision does not limit the right of Grantee to pass along to the subscribers state and local sales tax on any specific copyright fees.

XIX.
OPERATIONAL STANDARDS

The Grantee shall operate and maintain its cable television system in full compliance with whatever technical standards are lawfully prescribed by the Federal Communications Commission.

XX.
COMPLIANCE WITH FCC FRANCHISE STANDARDS

Pursuant to applicable FCC standards, the following recitations and provisions are set forth:

1. 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 Alexandria after consideration in a full public proceeding, according due process to all interested parties.
2. The initial franchise period shall be twenty (20) years in duration, and renewal franchise periods shall also be twenty (20) years in duration.
3. 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.
4. The franchise fee shall be no more than two percent (2%) of Grantee's "gross subscriber revenues" per year from cable television operations in the City.

XXI.
GRANTEE RULES

1. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions covering the conduct of this business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Ordinance.
2. All such rules, regulations, terms, and conditions promulgated under the subsection (1) above 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.
3. One copy of all such rules, regulations, terms, and conditions promulgated under subsection (1) above, together with any amendments, additions or deletions thereof, shall be kept currently on file with the Municipal 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 files and maintained.

XXII.
UNAUTHORIZED CABLE TAPPING

It shall be unlawful for any person or 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. Any

person or persons found guilty of a violation of any of the provisions of this Section shall be deemed guilty of misdemeanor.

XXIII.
SEPARABILITY

1. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.
2. Should any provision of this Franchise be inconsistent or at variance with any rule, regulation or policy, in whole or in part, of the Federal Communications Commission or any other agency having jurisdiction, such provision shall be invalid, but the remaining provision hereof shall not be affected hereby.

XXIV.
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 publications of this Franchise as such publication is required by law and such is payable upon the Grantee's filing of acceptance of this Franchise.

XXV.
ORDINANCES REPEALED

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

FIRST READING _____
SECOND READING _____
ADOPTED _____
PUBLISHED _____

/S/ Donald Rehorst
Mayor

Attest: /S/ Janice Wolf
Municipal Finance Officer

(SEAL)