

**ORDINANCE NO. 224**

AN ORDINANCE GRANTING A FRANCHISE TO SATELLITE CABLE SERVICES, INC., A SOUTH DAKOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO ERECT, OWN, OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY OF LAKE NORDEN, 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 OF LAKE NORDEN, SOUTH DAKOTA:

**WHEREAS**, Satellite Cable Services, Inc., a South Dakota corporation, has petitioned for the nonexclusive right to construct and operate a community antenna television system in the City of Lake Norden, South Dakota,

**NOW, THEREFORE**, the City of Lake Norden, South Dakota hereby grants to Satellite Cable Services, Inc. the rights under this Cable Television Franchise Ordinance.

**I**

**SHORT TITLE**

This ordinance shall be known and may be cited as the "Lake Norden Community Antenna Television Franchise Ordinance."

**II**

**DEFINITIONS**

For the purposes 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, the 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 Lake Norden, South Dakota.
2. "City Council" shall mean the City Council of Lake Norden, 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 various communications 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 Satellite Cable Services, Inc., or its successor in accordance with the provisions of this Franchise.

7. "Subscribers" are those persons 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.

### 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 of the line extension provisions hereof, 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 pulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways 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 15 years from date of the expiration of Cable Television Franchise # **193** subject to renewal for periods of reasonable duration on the same terms or conditions as contained herein, or on such different or additional terms and conditions as may be lawfully specified by the City and as are consistent with the requirements of Rule 76.31 of the 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 application shows that its CATV service during the preceding franchise period has reflected a good-faith effort to serve the needs and interests of its service area.

**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.
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 of Lake Norden 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 this Franchise.

**VII**  
**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 Lake Norden.

(b)

Property Damage Liability insurance to the extent of Fifty Thousand Dollars (\$50,000.00) as to any person and One Hundred Thousand Dollars (\$100,000.00) as to anyone accident, and personal injury liability insurance to the extent of One Hundred Thousand Dollars (\$100,000.00) as to anyone person and Three Hundred Thousand Dollars (\$300,000.00) as to anyone 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.

## **VIII**

### **OPERATION AND MAINTENANCE OF SYSTEM**

1. 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.
2. 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 or secondary school locations within the City 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.

Grantee shall also provide the City, for connections to three buildings to be elected by the City Council of the City, without charge, and one junction terminal to each of said buildings at a location therein to be selected by the City.

**X**

**EMERGENCY USE OF FACILITIES**

In the case of an 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**

**OTHER BUSINESS ACTIVITIES**

The Grantee hereunder shall not engage in the business of Belling, repairing or installing television receivers, radio receivers, or accessories for such receivers within the City of Lake Norden during the term of the Franchise.

**XII**

**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.

**XIII**

**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 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.

## XIV

### 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 Lake Norden the same restrict or obstruct the operation or location of any future streets or public places in the City of Lake Norden.
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 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 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, 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 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.
4. 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 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 holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and 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 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.

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 by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental 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 herein- after 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 systems or property have been installed in any street or public place without complying with the requirements of this ordinance, or the rights granted here- under 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.

12. 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.

## **XV**

### **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.

## **XVI**

### **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.

## **XVII**

### **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 three percent (3%) of the "annual gross subscriber revenue," as defined herein, of said Cable Television System as compensation for the said franchise.

"Gross subscriber revenues" shall include those revenues derived from the monthly service charge paid by 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 installations.

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 Lake Norden 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.

## **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 City Engineer with regard to locations, height, 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 Council determines that the public convenience would be enhanced thereby.

2. 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 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 Lake Norden, including NSP and Lake Norden Telecom Cooperative, 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 Lake Norden 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.

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.

## **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 basic CATV service, including installation charge.

2. Before making any changes in the rates and charges to subscribers for basic CATV service, Grantee shall file in writing with the City Finance Officer of the City of Lake Norden a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the City Council takes no action to set the proposed rate change for hearing or takes no other action to delay such changes, said proposed rate changes may become effective upon the expiration of the 30-day notice.

3. If the City Council sets the proposed rate change for hearing, said proposed rate changes will not become effective until the City Council has taken action by means of a resolution.

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

**XX**

**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 Finance Officer for investigation. In response to a complaint, Grantee shall be afforded a reasonable opportunity to present written statements of its position. The City Finance Officer shall attempt to resolve the complaints, but if this cannot be achieved, he shall submit a recommendation to the City Council recommending that: (1) the complaint be dismissed, or (2) corrective action be taken by Grantee. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

**XXI**

**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 Lake Norden after consideration in a full public proceeding, affording due process to all interested parties.
2. The franchise period shall be fifteen (15) years in duration, and renewal franchise periods shall also be fifteen (15) 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 three percent (3%) of Grantee's "gross subscriber revenues" per year from cable television operations in the City.

**XXII**

**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.

### **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 provisions hereof shall not be affected thereby.

### **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 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.

### **XXV**

#### **ORDINANCES REPEALED**

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

FIRST READING  
05/06/96

SECOND READING  
05/20/96

PUBLISHED  
05/29/96

/S/ Larry Steffensen, Mayor  
Attest: Delores Kangas, City Finance Officer

SEAL

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**Change Wording to Ordinance #224**

RESOLUTION OF THE CITY OF LAKE NORDEN, SOUTH DAKOTA, APPROVING THE TRANSFER OF THE FRANCHISE AND CABLE TELEVISION SYSTEM OF SATELLITE CABLE SERVICES, INC. TO MEDIACOM MINNESOTA LLC

**WHEREAS**, Satellite Cable Services, Inc. ("Franchisee") own, operates, and maintains a cable television system ("System) in the City of Lake Norden, South Dakota ("Franchise Authority"), pursuant to a cable television franchise ("Franchise"), and Franchisee is the duly authorized holder of the Franchise.

**WHEREAS**, on August 2, 2000, Franchisee and Mediacom Minnesota LLC, a Delaware Limited Liability Company ("Transferee"), entered into an Asset Purchase Agreement ("Agreement") pursuant to which the System and Franchise will transfer ("Transfer") from Franchisee to Transferee;

**WHEREAS**, Franchisee and Transferee have requested the Franchise Authority's consent to the Transfer in accordance with the Franchise requirements and have filed an FCC Form 394 with the Franchise Authority; and

**WHEREAS**, the Franchise Authority has reviewed the qualifications of the Transferee and finds it to be a suitable transferee;

NOW THEREFORE BE IT RESOLVED BY THE FRANCHISE AUTHORITY AS FOLLOWS:

**SECTION 1.** The Franchise Authority consents to the Transfer in accordance with the terms of the Franchise.

**SECTION 2.** The Franchise Authority confirms that (a) the Franchise was properly granted or transferred to Franchisee; (b) The Franchise is currently in full force and effect, and will expire on January 31, 2014, subject to options in the Franchise, if any, to extend such term; (c) the Franchise supersedes all other agreements between the parties; (d) the Franchise represents the

entire understanding of the parties and the Franchisee has no obligations to the Franchise Authority other than those specifically stated in the Franchise; and (e) Franchisee is materially in compliance with the provisions of the Franchise and there exists no fact or circumstance known to the Franchise Authority which constitutes or which, with the passage of time or the giving of notice or both, would constitute a materiel default or breach under the Franchise or would allow the Franchise Authority to cancel or terminate the rights thereunder.

**SECTION 3.** Transferee may transfer the Franchise and the System, or control related thereto to any entity controlling, controlled by, or under common control with Transferee. The Franchise Authority acknowledges that any such transfer does not trigger any right it may have to exercise any first purchase right or other right to acquire the system.

**SECTION 4.** The Franchise Authority consents to and approves the assignment, mortgage, pledge, hypothecation, or other encumbrance, if any, of the Franchise, the System, or assets relating thereto, as collateral for a loan.

**SECTION 5.** The Franchise Authority waives and consent requirements that may be triggered in the Franchise, local ordinance or state law by the trading stock on a stock exchange or regularly on the over-the-counter markets, to the extent that there is not an actual change in the ultimate working control of Transferee.

**SECTION 6.** This Resolution shall be deemed effective upon the date of enactment.

**SECTION 7.** The Franchise authority releases Franchisee, effective upon the Closing Date of the Agreement, from all obligations and liabilities under the Franchise that accrue on and after the Closing Date; provided that the Transferee shall be responsible for any obligations and liabilities under the Franchise that accrue on and after the Closing Date.

**SECTION 8.** This Resolution shall have the force of a continuing agreement with the Franchisee and Transferee, and the Franchise Authority shall not amend or otherwise alter this Resolution without the consent of Franchisee and Transferee.

**PASSED, ADOPTED AND APPROVED this 4th day of September 2000, by the City Council of the City of Lake Norden, South Dakota by the following vote:**

**Ayes: Andrews, Bevers, Carlson, B. Jager, U. Jager, Pietila. Nays: None.**

**Absent: None.**

