



ORDINANCE NO. 3458

AN ORDINANCE GRANTING A FRANCHISE TO BLACK HILLS FIBERCOM, INC.

BE IT ORDAINED BY THE CITY OF RAPID CITY, SOUTH DAKOTA

The City of Rapid City, South Dakota (the "City") hereby grants to Black Hills Fibercom, Inc. (the "Grantee"), the rights under this Cable Television Franchise Ordinance.

I.
SHORT TITLE

This ordinance shall be known and may be cited as the Rapid City Cable 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. "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.
2. "Cable Act" means Title VI of the Communications Act of 1934, 47 U.S.C. 151 et seq., as amended.
3. "Cable Service" means the one-way transmission to subscribers of Video Programming, or Other Programming Service; and, subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming service.
4. "Cable Television System," "Cable System" or "CATV" means 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 which includes video programming and which is provided to multiple subscribers within the City, but such term does not include:
 - A. a facility that serves only to retransmit the television signals of one or more television broadcast stations;
 - B. a facility that serves subscribers without using any public right-of-way;

limited to, those arising from copyright liability. Users of such outlets shall take reasonable precaution to prevent any use of the Cable System and such outlets in any manner that would result in inappropriate use of the system outlets or loss or damage to the system or which would result in violation of applicable laws and regulations governing such use.

- C. Location of the outlets provided shall be made in consultation with appropriate authorities within each building to be connected to the Cable System.
- D. Notwithstanding anything herein to the contrary, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds 150 cable feet unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet.
- E. If additional outlets of Basic Cable Service are provided to any such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, equipment rental, materials and labor.

2. Grantee shall provide the following services:

- A. Emergency Alert System as described above in Standards of Service, Section 4.A.
- B. One educational access channel which may be viewed by all cable subscribers. This channel is to be used for non-commercial purposes only.
- C. One governmental access channel which may be viewed by all cable subscribers, for use by the City of Rapid City, its departments and agencies, channel to be used at the discretion of the City of Rapid City, for non-commercial purposes only.
- D. A return line from City Hall to the headend for the transmission and/or retransmission of all regular meetings of the City's governing body held in the regular meeting room.
- E. Upon award of the franchise by the City and acceptance by the Grantee, Grantee shall provide products, services, and/or cash in the amount of Fifty Thousand Dollars (\$50,000) to the City to be used exclusively for capital support, including equipment acquisition and related services, of educational, governmental, or economic development telecommunication purposes. In any event, two years after the effective date hereof, any amount not having been provided in products or services shall be calculated and paid in cash within thirty (30) days. Additionally, Grantee will contribute Five Thousand Dollars (\$5,000.00) per year, in cash or in kind, for a period not to exceed fifteen (15) years, which sum shall be used to support the stated purposes, provided said contribution shall be subject to the City of Rapid City contributing Ten Thousand Dollars (\$10,000.00) per year

for support of the stated purposes. A separate fund shall be established to contain the funds contributed by both Grantee and City, said fund to be administered according to procedures to be established by the City. An accounting of funds spent shall be made available to Grantee upon request, but in no case less frequently than annually. Grantee's contribution shall be made each year within 45 days of receiving written confirmation of the receipt into the account of the City's pledged contribution.

XXII. EQUAL PROTECTION

If the City enters into a franchise permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the City's Public Ways for the purpose of constructing or operating a Cable System or providing cable service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

1. This Franchise may be terminated by the City upon material violation of any of its terms by the Grantee.
2. If the City becomes aware of violations of the terms of this Franchise, it shall notify the Grantee in writing of the exact nature of the alleged violation.
3. The Grantee shall have thirty days from the receipt of the notice: (a) to respond to the city contesting the allegation, or (b) to cure it, or (c) if, by the nature of the violation, such violation cannot be cured within the thirty day period, initiate reasonable steps to remedy it and notify the City of the steps being taken and the projected date that they will be completed.
4. If the Grantee fails to respond to the notice, or if the alleged violation is not remedied within sixty (60) days after the Grantee is notified of the alleged violation, or such other period as is agreed to between the Grantee and the City, the City shall schedule a public hearing to investigate the violation. Such public hearing shall be held at the next regularly scheduled meeting of the governing body of the City which is scheduled at a time which is no less than five business days therefrom. The City shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard, to present and cross examine witnesses. Upon such hearing, the City may decide to terminate the Franchise. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City de novo and to modify or revise such decision as justice may require. Such appeal to the appropriate court must be filed within sixty (60) calendar days of the issuance of the determination of the City. The City may, in its sole discretion, take any lawful action which it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of revocation of the Franchise.