

CITY OF SHELLY ORDINANCE NO. 72

AN ORDINANCE GRANTING TO LORETEL SYSTEMS, INC., DBA LORETEL CABLEVISION OF ADA, MINNESOTA HEREIN REFERRED TO AS GRANTEE, A NON-EXCLUSIVE FRANCHISE AGREEMENT AND THE RIGHT TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM WITHIN THE CITY LIMITS OF THE CITY OF SHELLY, STATE OF MINNESOTA, AND PROVIDING FOR REGULATION OF SUCH ACTIVITY.

Ordained by the City of Shelly, County of Norman, State of Minnesota

ARTICLE ONE
GRANT OF FRANCHISE

The City of Shelly in the County of Norman, State of Minnesota herein referred to as grantor, hereby grants a franchise of the scope and description as follows:

Grantee has the right and authority to conduct a community cable television system within the corporate limits of grantor. Grantee may build, construct, equip, own, maintain and operate along, under, or over present and future streets, alleys, and other public places within the corporate limits of grantor such wires, lines, poles, cables, appurtenances, fixtures, and other apparatus as are reasonably necessary for operating the systems.

Grantee also has the right and authority to lease, rent, or in any other manner obtain the use of, and use within the corporate limits of grantor, wire, lines, poles, cross-arms, cables, appurtenances, fixtures, and other apparatus of any and all holders of public permits, public licenses, or franchises granted by this ordinance and also subject to all existing and future ordinances, resolutions, and regulations of grantor.

Grantee also has the right to buy, purchase, lease, erect, equip, maintain, own, and operate plants, machinery, equipment, and buildings that are necessary to conduct such business.

The terms and conditions of the franchise shall also be applicable to any facilities installed or operated by grantee before the effective date of the franchise.

"Community cable television system," as used herein, means antennas, coaxial cables, amplifiers, drop lines, other conductors, and other equipment or facilities not limited to the foregoing, including any of the same, and any services performed by the use of same furnished by any public utility or other person or entity, whether pursuant to tariffs or any other arrangement, necessary for transmission thereof to customers at the selection of grantee for a consideration, or a public service.

Section 1. Quality of Service. The community cable television system shall be operated and maintained so that all customers shall receive signals of good technical quality and the full range of available services. Any complaints as to the quality of the signals or services shall be promptly and satisfactorily investigated by grantee, and adjustments required to correct situations disclosed by such investigations shall be made forthwith. Any inability to make corrections within ten (10) days after receipt of complaint shall be reported in writing by grantee to the Shelly City Clerk, who shall make, and grantee shall comply with, any orders pertinent to such corrections.

Section 2. Quality of Installations and Facilities. All installations shall be of a permanent and durable nature and installed in accordance with good engineering practices and comply with all existing and future ordinances, resolutions, regulations and order of grantor so as not to interfere in any manner with the rights of the public or individual property owners. The system shall not interfere with the travel and use of public places or facilities by the public, and during the construction, repair, or removal thereof, shall not obstruct or impede traffic. Any transmission facilities of a community cable television system or utilized in connection with a system

anywhere within the corporate limits of grantor, either on public or private property, shall consist of coaxial cables of low radiation characteristics, satisfactory to and approved by the Federal Communications Commission, the State of Minnesota and the Minnesota Cable Communications Board to the extent that grantor's resolution removing the system from Minnesota Statutes, Chapter 238 does not apply.

The community cable television system and any facilities utilized in connection therewith, either on public or private property, shall be installed and operated in such a manner as not to cause interference with the operation of any public safety radio stations or systems or other radio stations or systems operated by grantor. Should any such interference develop, the Shelly City Clerk may require that any or all operations of grantee under the franchise be immediately suspended and not be resumed until the cause of the interference has been corrected to the satisfaction of such official. The Shelly City Clerk or his representatives shall have the right to enter any and all premises and to make any suitable tests in the enforcement of this provision.

Section 3. Emergency Use of Facilities. Any and all community cable television system facilities shall, in areas serviced, be made available without charge as a public service for use by the Communication Division of the Civil Defense and Disaster Corps of grantor or any other public agency performing civil defense or disaster services.

Section 4. FCC Regulations. Grantee may only deliver to any customer the signal of a television station that is permitted or authorized to be delivered by a community cable television system operating in the City of Shelly, State of Minnesota, under the rules and regulations of the Federal Communications Commission or any successor thereof, as established by such commission from time to time.

ARTICLE TWO TERM

The Franchise is granted for a term of fifteen (15) years commencing with the date on which it is accepted. Thereafter, the franchise may be renewed for an additional ten-year term on such terms and conditions as may be mutually acceptable to grantor and grantee.

Grantee shall file a written acceptance of the franchise with the City Clerk of grantor. The franchise shall go into effect only when such acceptance has been filed.

ARTICLE THREE SPECIFIC CONDITIONS

Grantee must meet the following minimum requirements:

- a. **Channel Capacity:** The cable television system must have at least twenty-four (24) channel capacity
- b. **Two-way Capability:** The cable system to be maintained by the franchise there shall comply with the rules of the Minnesota Cable Communications Board.
- c. The cable television system must provide one channel to be used for access by the general public, local education authorities, and local governmental users.
- d. **Signal Carriage:**
 - i) The cable television system must carry at least the following television signals:
 - (1) Local off-air signals.
 - (2) PBS
 - (3) 5 additional program channels
 - (4) One premium service at extra charge (e.g. HBO or Showtime)

ARTICLE FOUR GENERAL CONDITIONS

Section 1. Reasonable Regulation. Grantor reserves the right to enforce reasonable regulations concerning the construction, operation, and maintenance of facilities located along, over, or under streets, alleys and other public premises and the placement of such facilities.

Section 2. Indemnity. Grantee shall indemnify and defend grantor, its boards, commissions, officers, agents, and employees, and any and all other public agencies, and their members, officers, agents, and employees, against any and all liabilities for injury to or death of any person or any damage to any property caused by grantee, its officers, agents, or employees, in the construction, operation or maintenance of its property, or arising out of the exercise of any right or privilege under the franchise.

Section 3. Comprehensive Liability Insurance. At all times during the term of the franchise grantee will, at its own expenses, maintain in force general comprehensive liability insurance with an insurance company approved by the City Clerk, the policy or policies to be in form satisfactory to the City Attorney of grantor. The coverage represented by such policy or policies shall be for the protections of grantor, by members of its boards and commissions, and its officers, agents, and employees against liability for loss or damages for bodily injury, death, and property damage occasioned by the activities or grantee under the franchise. Minimum liability limits under the policy or policies are to be Two Hundred Thousand and 00/100 Dollars (\$200,000) for personal injury or death of any one person and Five Hundred Thousand and 00/100 Dollars (\$500,000) for personal injury or death of two or more persons, in any one occurrence, and Five Hundred Thousand and 00/100 Dollars (\$500,000) for damage to property resulting from any one occurrence. Additional public agencies and their personnel shall be added as insured, subject to the same terms and conditions, at the request of grantor, and regardless, Grantee shall be required to provide the maximum liability amounts under M.S.A. 466.01 to 466.15, (as hereafter amended by the Minnesota Legislature) to protect Grantor.

The policies mentioned in the foregoing paragraph shall each contain a provision that a written notice of any cancellation or reduction in coverage of the policies shall be delivered to grantor ten (10) days in advance of the effective date thereof.

Section 4. Rates Franchisee shall establish and adhere to the rates set forth in Exhibit "A" attached hereto. Multiple dwelling units of any type may be subject to special installation rates and service charges.

RATE OR RATE STRUCTURE CHANGE:

The procedure to change any or all of the rates set forth in Exhibit "A" attached hereto shall be as follows:

- a) The franchisee shall make application to the franchiser in writing and shall make any pertinent information, which shall lend to substantiate the need for such change available to franchiser.
- b) The franchiser shall, within thirty (30) days after receipt of the application, approve or disapprove such rate or rate structure changes, and if disapproved, shall set forth their reasons for disapproval in writing to franchisee.
- c) Franchisee shall not implement any rate or rate structure changes until the first day of the month following franchisers approval and shall include with each rate or rate structure increase billing a notification setting forth franchiser's approval.

- d) Any taxes imposed by any branch of government shall not be considered a rate or rate structure change, and therefore, shall not be subject to this article.

Section 5. Expansion of Grantee's Facilities. Any facilities and appurtenances in streets, alleys, and public places, incidental to the franchised system, that have been, or are at any future time acquired, leased, or utilized in any manner by grantee are thereupon to be deemed authorized by and shall be subject to all the provisions of the franchise, including, but not limited to the duty of payment of compensation as required hereunder.

Performance of the duty of rendering compensation under the franchise or of any other obligation undertaken hereunder shall not be excused by the fact that grantee may presently or in the future purchase, lease, or utilize under any arrangement whatsoever, as all or any part of its facilities, equipment or facilities or services incidental to the franchised service furnished by any public utility or other person or entity, whether pursuant to tariffs or any other arrangement. The duty of payment of compensation and the performance of any and all other obligations undertaken hereunder shall apply to all such equipment, facilities, and services so purchased, leased, or utilized, whether such equipment, facilities or services constitute all or any part of the franchised system operated within the corporate limits of the grantor by, for, or on behalf of grantee.

Section 6. Limitation of Franchise. No privilege or exemption is granted or conferred by the franchise except those specifically prescribed herein. Any privilege claimed under the franchise by grantee in any street, alley, or other public place shall be subordinate to any lawful occupancy of same by grantor or by any other public agency, and to prior lawful occupancy of same by any other entity or person.

ARTICLE FIVE CONSIDERATION

Within thirty (30) days after the date of acceptance of terms set forth in this ordinance, grantee shall pay to grantor One and 00/100 Dollar (\$1.00) and other good and valuable consideration, being primarily the benefit derived by the citizens of grantor, as the initial purchase price of the franchise.

ARTICLE SIX ASSIGNMENT OF FRANCHISE

Grantee shall not have the right to assign the franchise or otherwise transfer it in any manner whatsoever, or sell, lease, license, or permit others to use or transfer in any manner whatsoever any interest in all or any part of its facilities that are installed or operated hereunder, except on prior written approval by ordinance of the City Council of grantor.

ARTICLE SEVEN FORFEITURE

The franchise may be forfeited, at the option of grantor, upon failure or refusal by grantee to observe the terms and conditions set forth herein. Forfeiture may be exercised by written notice to grantee of failure to observe the terms and conditions hereof, followed by grantee's refusal to eliminate or correct such failure or violation within forty-five (45) days. In the event of any failure or violation, grantor may sue in its own name in the manner provided by law for the forfeiture of the franchise without the necessity of resorting to procedures in quo warranto, and the exercise of such remedy of forfeiture shall not preclude exercise of any other right or remedy given to grantor by law, whether exercise concurrently or subsequently.

**ARTICLE EIGHT
EFFECT OF INVALIDITY**

The franchise is granted pursuant to the laws of the State of Minnesota relating to the granting of such rights and privileges by municipal corporations. If any article, section, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional, such invalidity shall not affect the validity of the portion of this ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required by grantee.

Adopted by the City Council of the City of Shelly, this 8th day of Sept., 1999.



Mayor

ATTEST:



City Clerk

Exhibit A

Loretel Cablevision Rate Structure

Monthly Service Rates

Basic Channels \$20.25

Optional Monthly Charges

HBO (Premium Channel) \$10.00

CINEMAX (Premium Channel) \$ 7.00

HBO/CINEMAX Combo \$15.00

Converter Box \$ 2.00

Remote Control Converter Box \$ 2.50

Additional Charges

Installation/Service Call \$40.00

Additional Outlet at Time of Install \$15.00

Reconnect Charge \$15.00

Add Premium Channel \$15.00