

**ORDINANCE AMENDING AN ORDINANCE REGULATING WATER AND
SEWER USAGE FOR THE CITY OF ALCESTER**

BE IT ORDAINED, by the City Council of the City of Alcester, Union County, South Dakota, that a certain ordinance entitled "An Ordinance Regulating Water and Sewer Usage for the City of Alcester", dated July 1, 1980, as amended, be further amended as follows:

SECTION I: WATER RATES

The following water rate schedule apply to all water purchased from the City of Alcester:

| <u>Usage</u> | <u>Water Rate</u> |
|--|-------------------|
| Minimum bill for 0 Gallons | \$16.00 |
| Each 1,000 gallons @ \$5.10 per thousand or a fraction thereof | |

The above rates apply, based upon water usage on a monthly basis. A minimum of \$16.00 per month will be assessed against all water users.

Rates for water users residing outside the City limits of the City of Alcester shall be increased by \$1.00 per month.

From and after June 1, 2006 the City of Alcester shall not establish any new residential water hookups for services outside the City limits of the City of Alcester.

The rates for all inoperative meters will be figured based upon the average of the last three months water usage. The consumer shall immediately report any meter malfunction to the City Finance Officer of the City of Alcester.

SECTION XII: EFFECTIVE DATE

This amended ordinance shall be effective on the 1st day of October, 2012, and shall apply to all water bills to be paid on the 1st day of November, 2012.

BE IT FURTHER ORDAINED, that the remaining sections of this ordinance as previously amended, shall remain in full force and effect except as modified by this ordinance.

Dated at Alcester, Union County, South Dakota, the _____ day of August, 2012.

CITY OF ALCESTER

By: 

Peter Larsen, Mayor

ATTEST:



Michael Kezar, Finance Officer

First Reading: August 6, 2012
Second Reading: August 15, 2012
Approved/Adopted: August 15, 2012
Published: August 23, 2012
Effective Date: October 1, 2012

ORDINANCE NO. 2012

AN ORDINANCE GRANTING A FRANCHISE TO ALLIANCE COMMUNICATIONS COOPERATIVE, INC. (GRANTEE), ITS SUCCESSORS AND ASSIGNS, TO ERECT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF ALCESTER, SOUTH DAKOTA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATIONS AND USE OF THE CABLE TELEVISION SYSTEM.

BE IT ORDAINED by the City of Alcester, South Dakota:

SECTION ONE
NAME

The Ordinance shall be known and may be cited as the "Alcester Cable Television Franchise Ordinance" (hereinafter sometimes referred to as the "Franchise").

SECTION TWO
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 in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

- 1) "Administrator" shall mean the Mayor or similar chief administrator of the City as may be elected or appointed.
- 2) "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).
- 3) "Cable Programming Service" means any Video Programming provided over a Cable System, regardless of service tier, including installation or rental of equipment used for the receipt of such Video Programming, other than;
 - a) Video Programming carried on the Basic Cable Service tier;
 - b) Video Programming offered on a pay-per-channel or pay-per-program basis; or

- c) A combination of multiple channels of pay-per-channel or pay-per-program Video Programming offered on a multiplexed or time-shifted basis so long as the combined service:
 - i) Consists of commonly identified Video Programming; and
 - ii) Is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. §543(l)(2) and 47 C.F.R. §76.901(b) (1993).

- 5) “Cable Service” means the two-way transmission to Subscribers of Video Programming, or other programming service, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.
- 6) “Cable System” or “System” shall have the meaning ascribed to it in applicable federal law.
- 7) “City” is the City of Alcester.
- 8) “Council” means the Alcester, the City Council.
- 9) “FCC” means the Federal Communications Commission.
- 10) “Franchise” means an initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other MVPD facility.
- 11) “Franchise Area” means the area within the legal boundaries of the City.
- 12) “Grantee” is Alliance Communications Cooperative, Inc., a South Dakota corporation.
- 13) “Gross Revenue” means only that monthly revenue received from Basic Cable Service, Cable Programming Service, and Pay Television directly by the Grantee from the operation of its System within Franchise Area. The term “Gross Revenues” shall not include any other revenue billed or received by the Grantee including, but not limited to installation fees, equipment rental fees, maintenance fees, repair fees, replacement fees, aid-to-construction fees, connection fees, equipment upgrades, franchise fees, late fees, any fees itemized and passed through as a result of Franchise imposed requirements or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any

municipality, state, or other governmental unit and collected by Grantee for such governmental unit.

- 14) “Multichannel Video Program Distributor” or “MVPD” means a Person including, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by Subscribers or customers, multiple channels of Video Programming.
- 15) “Open Video Services” or “OVS” means any Video Programming Services provided to any Person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. §573, as may be amended, regardless of the Facilities used.
- 16) “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- 17) “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- 18) “Standard Installation” means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.
- 19) “Street” means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by the City.
- 20) “Subscriber” means any Person who lawfully receives Cable Service.
- 21) “Video Programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION THREE GRANT OF AUTHORITY

- A) Grant of Nonexclusive Authority. There is hereby granted by the City to the Grantee the non-exclusive right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in Franchise Area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in Franchise Area of a Cable System.

- 1) A Franchise shall be nonexclusive, and the City reserves the right to grant a similar use of said Streets to any MVPD at any time.
 - 2) The Franchise shall apply to the entire service area of the City, as it exists now or may later be configured.
 - 3) In the event the City grants one or more additional Franchises or one or more non-franchised MVPD's commence providing Cable Service in the City, Grantee shall have the right to terminate or reduce the term of this Franchise in its sole discretion.
 - 4) Neither the City nor Grantee(s) may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any other ordinance and this Franchise, this Franchise shall control.
- B) Franchise Term. A Franchise shall be in effect for a period of twenty (20) years from the effective date of the agreement, unless renewed, revoked, or terminated sooner as herein provided.
- C) Territorial Area Involved. The Franchise shall be granted for the corporate boundaries of the City, as it exists from time to time. In the event of annexation by the City, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of twenty-five (25) homes per cable mile as measured from the last fiber node or terminating amplifier.
- D) Written Notice. All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to any officer of Grantee or the City's Administrator of this Ordinance as specified in a Franchise.

SECTION FOUR CONSTRUCTION AND OPERATIONS STANDARDS

- A) Conditions on Street Use.
1. Grantee shall obtain all required permits from the City before commencing any construction upgrade or extension of the System.
 2. The City shall impose no permit fees upon Grantee.
 3. If at any time during the period of a Franchise the City shall elect to alter, or change the grade or location of any Street, alley or other public way, Grantee shall, at its own expense, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If the City reimburses other occupants of the Street, Grantee shall be likewise reimbursed.

4. Grantee shall, on request of any Person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
5. Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.
6. Nothing contained in this Ordinance shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.
7. In areas where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.
8. Grantee shall at all times construct and operate its System in accordance with applicable FCC technical specifications.
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 Systems 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 the System as specified herein, 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.
11. 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. Upon termination of service to any Subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such Subscriber upon his request.
12. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the 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 Council or its designated representative determines that the public convenience would be enhanced thereby.

13. 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 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.
14. 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 Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.
15. Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to Subscribers for Basic Cable Service, including installation charges.
16. During the term hereof, the City may regulate rates only if authorized to do so by the FCC regulations and then such regulation shall only be in accordance with the provisions of such regulations.

SECTION FIVE SYSTEM PROVISIONS AND PUBLIC SERVICES

Operation and Maintenance of System. The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

- 1) Service to Schools and the City. The Grantee shall, subject to the territorial requirements of Section III(C) above, provide three (3) outlets of Basic Cable Service at no cost to the City at a City office or building to be mutually agreed upon by the City and Grantee. Grantee shall comply with the emergency alert requirements of federal law.
- 2) PEG Channel. The Grantee shall allocate one (1) channel to the City as a public, educational or governmental access channel. Until such time as the City files a written request with Grantee for full-time use of the channel, Grantee shall have the right to use that portion of the channel capacity that is not being used by the City. Grantee shall have a reasonable period of time after notification to vacate

its use of the channel. Grantee shall assist the City in obtaining the necessary licenses and frequency clearance to enable the City to use said channel.

- 3) Emergency Use. Grantee shall comply with the emergency alert requirements of federal law.

SECTION SIX OPERATION AND ADMINISTRATION PROVISIONS

- A) Indemnification of the City.
 - 1) Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to the City's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.
 - 2) In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must with respect to each claim:
 - a) Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - b) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - c) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.
- B) Insurance. Grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of the City in its capacity as such. The policies of insurance shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000) for personal injury or death of any one Person, and One Million Dollars (\$1,000,000) for personal injury or death of two or more Persons in any one occurrence, Three Hundred Thousand Dollars (\$300,000) for property damage to any one Person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.

- C) The Grantee shall pay the City a monthly Franchise fee in the amount of three percent (3%) of Grantee's Gross Revenues. The Franchise fee shall be payable monthly, together with a brief accounting showing the basis for the computation.

SECTION SEVEN
REVOCATION, ABANDONMENT, AND SALE OR TRANSFER

- A) The City's Right to Revoke. The City reserves the right to revoke, terminate or cancel a Franchise, if after strictly following the procedures required by Section VII(B) below, it is determined that Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation.
- B) Procedures for Revocation.
- 1) The City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, the City shall provide Grantee with written findings of fact which are the basis of the revocation.
 - 2) Grantee shall be provided the right to a public hearing affording due process before the Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. The City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
 - 3) After the public hearing and upon written determination by the City to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.
 - 4) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.
 - 5) Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.
- D) Sale or Transfer of Franchise. No sale or transfer of a Franchise shall take place without the written approval of the City, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assign of Grantee. Said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure indebtedness.

SECTION EIGHT
MISCELLANEOUS PROVISIONS


- A) Franchise Renewal. Any renewal of a Franchise shall be done in accordance with applicable law, if any.
- B) Amendment of Franchise. Grantee and the City may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time, in accordance with applicable law.
- C) Marketing. Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

- B) Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and the remainder shall remain in full force and effect.

SECTION NINE
PUBLICATION, EFFECTIVE DATE

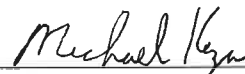
This Ordinance shall be published in accordance with law. The effective date of this Ordinance shall be the 1st day of October, 2012.
Passed and adopted this 15th day of August, 2012.

CITY OF ALCESTER, SOUTH DAKOTA



Peter Larsen, Mayor

ATTEST;



Michael Kezar, Finance Officer

First Reading: August 6, 2012
Second Reading: August 15, 2012
Approved/Adopted: August 15, 2012
Published: August 23, 2012
Effective Date: October 1, 2012

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ALCESTER, SD, AMENDING THE REVISED MUNICIPAL ORDINANCES OF THE CITY BY AMENDING SECTION 2.0201, WARDS.

BE IT ORDAINED BY THE CITY OF ALCESTER, SD:

Section 1. That Section 2.0201 of the Revised Municipal Ordinances of Alcester, SD, is hereby amended to read as follows:

2.0201 Wards. The City shall be divided into three wards which shall be designated respectively as Wards One, Two and Three. The wards shall be described by stating the certain street or avenue designations or other landmarks that divide and border the wards. Any reference to street or avenue below shall mean an imaginary line running down the approximate middle of each street or avenue. The wards of the City of Alcester are as set forth below and on the map thereof on file in the office of the Finance Officer. Any discrepancies shall be resolved by reference to the map rather than the physical descriptions set forth herein.

Ward One shall include all of that part of the City west of Broad Street. It shall also include all of that part of the City west of the alley between Broad Street and Iowa Street located between Second Street and the railroad tracks. It shall also include all of that part of the City west of the alley between Broad Street and Iowa Street located between Sixth/301st Street and Third Street.

Ward Two shall include all of that part of the City located between the alley between Broad Street and Iowa Street and a line defined by Park Avenue, the boundary between Lots 32 and 36 of the Morningside Addition, the boundary between Lots 1 and 2 of Block 1 of the Hyden Heights Addition, Hyden Drive, and Church Street. It shall also include all of that part of the City east of Broad Street and west of the alley between Broad Street and Iowa Street located between the Second Street and Third Street.

Ward Three shall include all of that part of the City east of the line defined by Park Avenue, the boundary between Lots 32 and 36 of the Morningside Addition, the boundary between Lots 1 and 2 of Block 1 of the Hyden Heights Addition, Hyden Drive, and Church Street.

Adopted this 16 day of January, 2012.


Mayor

ATTEST:



Finance Officer

Seal

First Reading: 12-29-11
Second Reading: 1-16-12
Publication: 1-26-12
Effective Date: 2-15-12

Published once at the approximate cost of _____.