

ORDINANCE NO. 2011-1

THIS IS AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO HUNTEL CABLEVISION, INC., A NEBRASKA CORPORATION, ITS SUCCESSORS AND ASSIGNS TO OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF WAYNE, NEBRASKA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE PROVIDING FOR CITY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

BE IT ORDAINED BY THE MAYOR AND THE COUNCIL OF THE CITY OF WAYNE, NEBRASKA:

SECTION 1. DEFINITIONS. For the purpose of this ordinance, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- (a) “Municipality” shall mean the City of Wayne.
- (b) “Council” shall mean the governing body of the Municipality.
- (c) “Company” shall mean HunTel CableVision, Inc., and its successors and assigns.
- (d) “Person” shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.
- (e) “Franchise Area” shall mean that area within the corporate limits of the Municipality.
- (f) “Street” shall mean the surface of and the space above and below any public street, right of way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communications or utility easement, now or hereafter existing as such within the franchise area.
- (g) “Property of Company” shall mean all property owned, installed or used by Company in the conduct of a CATV business in the Municipality.
- (h) “Cable Television System” (referred to as “CATV”) shall have the same definition of that included in the Telecommunications Act and includes, without limitation, antenna, cable wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed, or wired for the purpose

of producing, receiving, amplifying, and distributing by fiber optic and/or coaxial cable audio and/or visual radio, television, electronics or electrical signals to and from persons, subscribers, and locations in the franchise area.

- (i) “Basic Television Services” shall mean the simultaneous delivery by the Company to television receivers of all subscribers in the Franchise Area of all signals of over the air television broadcasters and public, educational, or governmental television access facilities required by the FCC to be carried by CATV system.
- (j) “Additional Service” shall mean any communications service other than basic service provided over its CATV by the Company directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in communications services including but not limited to satellite distributed programming, security alarm monitoring, data transmission, or any other electronic intelligence transmission, facsimile reproduction, meter reading, and home shopping.
- (k) “Pay Television Service” shall mean the simultaneous delivery by the Company to television receivers over the CATV of television programming to subscribers for a fee or charge (over and above the charge for Basic Television Service) on a per program, per channel, or other subscription basis.
- (l) “Subscriber” shall mean any person or entity receiving Basic Television Service.
- (m) “GROSS ANNUAL SUBSCRIBER REVENUES” shall mean the compensation and other consideration received by the Company directly from subscribers in payment for regularly furnished Basic CATV and Pay Television Service. Gross annual Subscriber Revenue shall not include: (i) any taxes on services furnished by the Company imposed directly on any subscriber or user by any City, state, or other governmental unit and collected by the Company for such governmental unit, (ii) revenue from any additional service nor from auxiliary services which include but are not limited to leased channels, Internet access, advertising, telecommunications, and all other telecommunications services not specifically described above.
- (n) “Drop” shall mean a wire or cable that connects each building to the main (trunk) cable.
- (o) “Telecommunications Act” shall mean the Telecommunications Act of 1996, as amended from time to time and located in Title 47, Chapter I, Part 76 of the Code of Federal Regulations.

SECTION 2. GRANT OF AUTHORITY. Whereas, the Municipality has approved the qualifications of Company and the adequacy and feasibility of the Company’s construction arrangements as part of a full public proceeding affording due process, there is hereby granted by the Municipality to the Company the nonexclusive right and privilege to engage in the business of

operating and providing a CATV in the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public way and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms, or corporations including but not limited to any public utility or other grantee franchised or permitted to do business in the City.

SECTION 3. TERM OF FRANCHISE. The franchise and rights herein granted shall continue in force and effect for a term of fifteen (15) years beginning on the effective date of this franchise. This franchise shall automatically renew for an additional fifteen (15) year period unless either Municipality or Company provide the other party written notice of termination at least one hundred eighty (180) days prior to the last day of the initial term.

SECTION 4. CONDITIONS OF STREET OCCUPANCY.

(a) All transmission and distribution structures, lines, and equipment erected by Company within the franchise area shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of such streets or other public ways and places. The CATV shall be constructed, repaired, and operated in compliance with all current Municipality, State, and National construction and electrical codes. Company shall install and maintain its wires, cables, fixtures, and other equipment in such manner that they will minimize any interference with any installations of the Municipality or of a public utility serving the Municipality.

(b) Company shall not unnecessarily interfere with the use of any alley, street, sidewalk, driveway or public place and, where the paving or surface of any alley, street, sidewalk, driveway or public place is disturbed, Company, at its own expense and in a manner satisfactory to the authorized representatives of the Municipality, shall replace such paving or surface in as good condition as before such work was commenced.

(c) Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of Company when required by the Municipality by reason of traffic conditions, public safety, street vacation, street construction, change of establishment of street grade, installation of sewer, drains, water pipes, Municipality owned power or signal lights or any other type of structure or improvement by Municipality.

(d) All wires, conduits, cables and other property and facilities of Company shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the alleys, streets or public places of the Municipality. Company shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the Municipality. Company shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any then existing gas, electric, or telephone fixtures, or with any water hydrants or mains.

(e) All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety consideration. All installations shall be underground in those areas of the City where public utilities providing telephone or electric service are underground. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Company may install its service above ground with the understanding that, at such time as those facilities are required to be placed underground by the City, the Company shall likewise place its services underground without additional cost to the residents of the City other than as may be granted under the provisions of this ordinance.

(f) The Municipality shall give Company reasonable notice of plans for street improvement where paving or resurfacing of a permanent nature is involved. The notice shall

give Company sufficient time to make any additions, alterations, or repairs to its facilities as it deems necessary in advance of the actual commencement of the work, so as to permit Company to maintain continuity of service.

(g) In case of disturbance of any street, public way, or paved area by Municipality, the Company shall, at its own cost and expense and in a manner approved by Municipality, replace and restore such street, public way or paved area in as good a condition as before the work involving such disturbance was done.

(h) The Company shall have the authority to trim trees overhanging upon streets, alleys, sidewalks and other public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company. The Company shall make every effort to preserve the esthetic beauty and viability of any trees trimmed.

(j) Any poles or other fixtures placed in any public way by the Company shall be placed in such manner as not to interfere with the usual travel on such public way.

(k) The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Company when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change of establishment of street grade, installation of sewers, drains, water pipes, water lines, signal lines, and tracks or any other type of structures or improvements by the city, provided, however, that the Company shall in all such cases have the rights and obligations of abandonment of property of the Company subject to City Ordinances.

SECTION 5. SAFETY REQUIREMENTS.

(a) Company shall at all times employ ordinary care use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) All structures and all lines, equipment and connection in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the franchise area, wherever situated or

located shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

SECTION 6. PUBLIC BUILDING CONNECTION/LOCAL ORIGINATION PROGRAMMING.

(a) Company shall provide one free Drop at the following public buildings:

- (1) City Hall located at 306 N. Pearl;
- (2) Fire Hall located at 510 Tomar Dr.;
- (3) Public Library Building located at 410 Pearl;
- (4) Community Activity Center Located at 901 W. 7th Street;
- (5) Line Shop located at 211 S. Pearl;
- (6) Power Plant located at 208 S. Main; and
- (7) Public Works located at 207 Fairgrounds Avenue

(b) No monthly charges shall be made to Municipality for providing basic CATV service to the buildings listed above.

(c) During the term of the franchise, the Company shall dedicate, at no charge, at least two local origination channels, one for City government access and one for educational access for public school/college use.

SECTION 7. SYSTEM CONSTRUCTION AND EXTENSION.

(a) Company, whenever it shall receive a request for service from at least ten (10) subscribers within 1,000 feet of its trunk cable, shall extend its system to such subscribers at no cost to the subscribers for system extension other than the usual connection fees for all subscribers, provided that such extension is technically and physically feasible at a commercially reasonable cost. The 1,000 feet shall be measured in extension length of Company's cable required for service located within the public way and shall not include length of necessary service drop to the subscriber's home or premises.

(b) No person, firm, or corporation in Company's service area shall be arbitrarily refused service. However, in recognition of the capital costs involved for unusual circumstances and in

order to prevent inequitable burdens on potential cable subscribers in more densely populated areas, service may be made available on the basis of cost of materials, labor, and easements. Unusual circumstances shall include but not be limited to: a requirement for underground cable, a distance of more than 150 feet from the distribution cable to the connection of service to a subscriber, or a density of less than ten (10) subscribers per 1,000 feet of cable system.

(c) In the event additional adjacent territory is incorporated within the Municipality's limits by annexation or otherwise, Company's rights and duties under this Ordinance shall be deemed to include such additional territory.

(d) Company shall maintain a minimum capability of not less than thirty-five (35) channels for of the CATV in Municipality.

SECTION 8. OPERATIONAL STANDARDS.

(a) Company shall operate and maintain its CATV in full compliance with the standards set forth by the Federal Communications Commission.

(b) Company shall construct, operate and maintain the CATV in a safe manner and shall comply with all applicable building codes, electrical codes and, at a minimum, all of the safety and other regulations set forth in the Telecommunications Act.

(c) Company shall abide by any and all applicable subscriber privacy rules and regulations of the federal and state governments.

SECTION 9. LOCAL OFFICE; COMPLAINTS.

(a) Company shall maintain a business office or agent which subscribers may telephone twenty-four (24) hours per day, seven days per week, without incurring added message or toll charges.

(b) Company shall respond within twenty-four (24) hours after receipt of a complaint. Should a subscriber have an unresolved complaint regarding the quality of cable television service, equipment malfunctions, or similar matters, the subscriber shall be entitled to meet jointly with an appropriate representative of the Municipality and a representative of Company within Thirty (30) days to fully discuss and resolve such matters.

(c) Company shall maintain written logs or electronic data listing the day and time of subscriber complaints, identifying the subscriber, and describing the nature of the complaint and when and what action was taken by Company. This information shall be maintained for three (3) years, and Company shall provide it to Municipality upon request.

SECTION 10. RATES. Company has on file with the Municipality a schedule of tariffs which shall include all fees, charges, and rates to be charged to subscribers. If any of the fees, charges, or rates are changed, Company shall notify the Municipality of such changes in writing at least thirty (30) days before the changes take effect.

SECTION 11. PREFERENTIAL OR DISCRIMINATION PRACTICES PROHIBITED. Company shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled and provided further that connection and service charges may be waived or modified during promotional campaigns of Company.

SECTION 12. FRANCHISE PAYMENTS.

(a) Company shall pay to Municipality a franchise fee equal to five percent (5%) of the Gross Annual Television Subscriber Revenue received for the CATV in the Franchise Area. The fee shall be paid on or before May 1 of each calendar year for cable television system in the Franchise Area for the preceding year. Except as provided in any related Pole Attachment Agreement or Head End Lease, no other fee, charge or consideration shall be imposed. Company shall provide an annual summary report showing Gross Annual Television Subscriber Revenue received during the twelve months preceding the due date of each annual franchise fee payment.

(b) Company shall keep complete and accurate books of accounts and records of the business and operations under and in connection with the CATV. The duly authorized representative or Agent of the Council shall have the right to review all records pertaining to

Gross Annual Television Subscriber Revenue. Non-revenue financial records will only be requested in the aggregate on a summary prepared by Company. Municipality acknowledges the sensitivity of these records and will request this information only on an “as needed” basis and will treat this information as confidential and proprietary to the fullest extent as allowed by law.

The Council shall have the right to hire, at its own expense, an independent certified public accountant or other business or financial expert to review the books and records of Company. If after a financial audit it is determined that Company has underpaid amounts owed to the Municipality by more than three percent (3%) annually, then Company shall pay Municipality the additional amount due plus interest at the rate of six percent (6%) per annum and shall reimburse Municipality for the actual cost of the audit. A false entry into the books and/or records of Company made by Company of a material and substantial fact shall constitute a material violation of this Ordinance. Erroneous entries shall not constitute a material violation if made in good faith.

SECTION 13. INDEMNIFICATION OF MUNICIPALITY. Company shall at all times protect and hold harmless the Municipality from all claims, actions, suits, liability, loss, expense, or damages of every kind and description, including investigation costs, court costs, and attorney’s fees, which may accrue to or be suffered or claims by any person or persons arising out of the negligence of Company in the ownership, construction, repair, replacement, maintenance, and operation of the CATV and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of such CATV. The obligation of Company to indemnify and hold Municipality harmless under this Section shall be contingent upon Municipality providing Company: (i) prompt notice of any such claim, action, suit, liability, loss, expense or damage; (ii) the right to defend and settle such claim; and (iii) reasonable assistance, including access to all relevant information regarding such claim.

SECTION 14. INSURANCE. For so long as it owns and operates a CATV within the Municipality, Company shall secure and maintain public liability, property damage insurance and umbrella coverage in at least the following amounts:

1. Public liability and property damage insurance in the amount of Two Million Dollars (\$2,000,000.00) per event/per occurrence.
2. Umbrella liability shall be in the amount of Two Million Dollars with no more than a Fifty Thousand Dollar (\$50,000.00) deductible and/or base insurance. Company's provider of public and personal liability and property damage insurance shall specifically include the Municipality, the Mayor, the Council, their officials, agents, employees or representatives as additional named insured. Furthermore, the public and personal liability and property damage insurance policy shall be issued by an agent or representative of an insurance company licensed to do business in the State of Nebraska and which has one of the three highest and best ratings from the AM Best Company. The public liability and property damage insurance policy shall contain an endorsement obligating the insurance company to furnish the City Administrator for Municipality with at least thirty (30) days written notice in advance of cancellation of the insurance. Renewal or replacement policies or certificates shall be delivered to the Municipality Administrator for Municipality at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace. Company shall provide with a certificate of insurance on an annual basis evidencing that all of the insurance requirements set forth above have been complied with.

SECTION 15. EMERGENCY AND DISASTER WARNINGS. In the case of an emergency or a disaster, the Company shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster period. The Company will also provide a means of interrupting all

channels on the cable system to present emergency audio messages by local law enforcement and public officials. Equipment for such purposes shall be installed in the head-end and shall be accessed by telephone to be installed at a location designated by the City at the company's expense. This may require a dedicated phone line which shall be the City's expense. The equipment shall be purchased and owned by the City, and all maintenance and repair thereon shall be at the City's expense.

SECTION 16. ASSIGNMENT OR TRANSFER OF FRANCHISE. Company shall not be permitted to sell, lease, sublease, transfer or otherwise change either ownership or working control of the franchise herein without the prior written consent of City, which consent will not be unreasonably withheld or withheld contrary to federal or state law.

SECTION 17. TERMINATION. In the event that Company has failed to cure one or more of the material defects listed below within sixty (60) days after its receipt of written notice from the Council of such a defect, Municipality may cancel the franchise conferred by this ordinance prior to its expiration date upon a finding at a public hearing. Such public hearing shall be held at least thirty (30) days after notice of the proposed cancellation has been published. The defects for which this Section applies are :

- (1) Material breach, whether by act or omission, of any terms or conditions of this franchise ordinance;
- (2) Material misrepresentation of fact in the application for or negotiation of the franchise;
- or,
- (3) Failure to provide subscribers or users with reasonably satisfactory service.

SECTION 18. SEPARABILITY. If any section, subsection, sentence, clause, phrase, or portion of this franchise shall for any reason be held invalid or unconstitutional by any court of competent jurisdiction or by any regulating authority with 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; provided, however, that the rates as set forth herein are dependent upon each other and, in the event that any of such rates are determined by a court of competent jurisdiction to be invalid, then all rates established hereunder shall be subject to renegotiations.

SECTION 19. CONFLICTS. All ordinances or portions of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 20. PUBLICATION. This Ordinance shall be published in pamphlet form as provided by the Statutes of the State of Nebraska and shall be in full force and effect from and after its passage, approval and publication as provided by law.

SECTION 21. POLE ATTACHMENT. This Ordinance shall include and incorporate by this reference the Pole Attachment Agreement, if any, attached as Exhibit A hereto.

SECTION 22. HEAD END LEASE. This Ordinance shall include and incorporate by this reference the Head End Lease, if any, attached as Exhibit B hereto.

PASSED AND APPROVED THIS 18th day of January, 2011.

CITY OF WAYNE, NEBRASKA

By _____
Ken Chamberlain, Mayor

ATTEST:

Betty A. McGuire, City Clerk

STATE OF NEBRASKA)
) ss.
WAYNE COUNTY)

Betty A. McGuire hereby certifies that she is the duly appointed, qualified, acting Clerk of the City of Wayne, Nebraska, and that the above and foregoing Ordinance was duly passed and approved at a regular meeting of the Council of Wayne, Nebraska, held on the 18th day of January, 2011.

(SEAL)

Betty A. McGuire, CLERK.