

Town of Silverton

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ORDINANCE 2010-06

AN ORDINANCE AMENDING CHAPTER THREE, ARTICLE TWELVE OF THE TOWN CODE BY GRANTING A FRANCHISE TO VIDION COMMUNICATIONS, LLC, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO FURNISH, SELL AND DISTRIBUTE CABLE TELEVISION AND OTHER SERVICES TO THE TOWN AND TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE TOWN AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID TOWN ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE CABLE

TELEVISION SERVICE TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE TOWN AND IN THE TERRITORY ADJACENT THERETO AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AS MAY BE NECESSARY, AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF SILVERTON, SAN JUAN COUNTY, COLORADO THAT ARTICLE TWELVE OF CHAPTER THREE OF THE SILVERTON TOWN CODE IS HEREBY REPEALED IN ITS ENTIRETY AND REENACTED TO READ AS FOLLOWS:

3-12-1 DEFINITIONS For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. 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. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

- A. "Cable Television Service" means "cable service" as defined by the Communications Act of 1934, as amended, including the provision of data and voice services.
- B. "Cable Television System" means "cable system" as defined by the Communications Act of 1934, as amended, including system facilities for the provision of data and voice services.
- C. "Company" refers to and is Vidion Communications, Inc. and its successors and assigns.
- D. "Facilities" refer to and are all facilities reasonably necessary to provide Cable Television Service within and through the Town and includes plants, works, systems, lines, equipment, underground links, switches, wires and radio links.
- E. "Streets and Other Public Places" refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements and other public rights of way within the Town, but shall not include any town parks, the water treatment facility, waste water treatment facility, the cemetery, Town Hall, the Carriage House or other such municipally owned property.
- F. "Town" refers to and is the Town of Silverton, San Juan County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town of Silverton.

G. "Town Board of Trustees" or "Town Board" refer to and is the governing body of the Town of Silverton.

3-12-2 GRANT OF FRANCHISE

A. Grant of Franchise. The Town hereby grants to the Company the right to furnish, sell and distribute Cable Television Service to the Town and to all persons, businesses and industries within the Town; a non-exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all Facilities reasonably necessary to provide Cable Television Service; and a non-exclusive right to make reasonable use of all Streets and other public places as may be necessary to carry out the terms of this Ordinance.

B. Term of Franchise. The term of this franchise shall be for ten (10) years, beginning at the Effective Date.

3-12-3 FRANCHISE FEE

A. Franchise Fee. In consideration for the grant of this franchise, the Company shall pay as an annual franchise fee to the Town a sum equal to five percent (5%) of the Company's annual gross service revenues. Such funds may be collected from subscribers via the provision of Cable Television Service in the franchised area but if the imposition of such fees is at any point determined to be contrary to law, the remaining provisions of this Agreement shall continue to be given full effect and the Town and Company shall renegotiate the terms of mutual consideration under this Agreement.

B. Payment Schedule. The annual franchise fee shall be paid to the Town in quarterly installments, which shall be due on or before the last day of the month following the end of each calendar year quarter and which shall be based on revenues received by Company in the preceding quarter. All fees collected by the Company as "franchise fees" via customer billing prior to the effective date of this Ordinance shall be remitted to the Town within thirty (30) days of the effective date of this Ordinance. After such time, Company shall commence a regular quarterly payment schedule pursuant to this Subsection (B).

D. Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property, sales and use taxes or any other tax not related to the franchise or the physical operation thereof.

3-12-4 CONDUCT OF BUSINESS

A. Conduct of Business. The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Colorado and the Federal Communications Commission ("FCC").

B. Compliance with Regulations. The Company shall comply with all applicable rules and regulations adopted by the FCC, the State of Colorado and the Town.

C. Provision of Service. The Company shall provide Cable Television Service in accordance with a Schedule of Rates and Charges, as may be amended by the Company from time to time and approved by Town if the rate increase has been given approval by the FCC. Company shall provide a Cable Television System having a capacity of thirty-five (35) channels capable of distributing video and associated audio on each channel that is programmed. Company shall maintain and upgrade its Facilities and service to provide quality service consistent with the current industry standards. The Company shall assure that it

has adequate local maintenance personnel and adequate equipment and facilities to assure such quality service. The Company shall maintain staffing levels and support equipment to assure that telephone inquiries are handled promptly in order to minimize busy signals and hold times. The Company shall provide, during regular business hours, a person on call able to perform minor repairs or corrections to malfunctioning equipment of the cable system. The Company shall respond to individual requests for repair service promptly after notification. System outages and problems associated with channel scrambling and switching equipment shall be acted upon promptly after notification. The Company specifically agrees to take reasonable steps to minimize the impacts of snow on winter reception. The Company shall maintain a means to receive repair service requests and notice of system outages at times when its business office is closed.

D. Fee Schedule. Company shall not exceed the fees noted on the Company's Schedules of Rates and Charges as the same from time-to-time is amended.

3-12-5 CONSTRUCTION, INSTALLATION & OPERATION OF COMPANY FACILITIES

A. Location of Facilities. Company's Facilities shall not interfere with the Town's use of Streets and Other Public Places. There shall be no installation of facilities of any type in any street or public place without the prior written approval of the Town.

B. Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable codes of the Town of Silverton, the State of Colorado and the United States of America. All public and private property disturbed by Company via construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially such property's former condition. The Company shall comply with the Town's requests for reasonable and prompt action to remedy all damage to public or private property, adjacent lots, streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The Town reserves the right to restore property and remedy damages caused by Company activities at the expense of Company in the event Company fails to perform such work within a reasonable time after notice from the Town. Before beginning any construction or excavation upon Town roads or streets, Company shall comply with all applicable Town road cut permit requirements.

C. Relocation of Company Facilities. If at any time the Town reasonably requests the Company to relocate any distribution line, service connection, or other Facility installed or maintained in streets or other public places in order to permit the Town to make any change which benefits the public, such relocation shall be made by the Company at its expense. Following relocation, all property shall be restored to substantially its former condition by the Company at its expense. The Town will reasonably consider alternatives not requiring relocation in all cases.

D. Service to New Areas. If during the term of this franchise the boundaries of the Town are extended, the Company shall not unreasonably withhold the extension of service to the newly annexed areas. In calculating whether to extend service to annexed or presently unserved areas, Company may consider the financial viability of doing so. Should company elect to extend service to such areas, however, such service shall be in accordance with the terms of this franchise Ordinance, including payment of franchise fees and in accordance with the Rules and Regulations of the FCC. If a newly annexed area is undeveloped, Company shall make reasonable efforts to extend service and Facilities to such areas upon the installation of other utilities to the area.

E. Restoration of Service. In the event the Company's Communications Facility or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time subject to availability of functioning poles, ducts and other rights-of-way used by the Communications Facility.

F. Rules and Regulations. All lines and equipment constructed under this grant shall be constructed in accordance with established practices as prescribed by the FCC and its duly or legally constituted successors in authority; and the rights and privileges herein granted in said Streets and Other Public Places shall be subject at all times to such ordinances and reasonable regulations, and road cut permit procedures as are now or shall hereafter be ordained or passed by said Town concerning similar used and excavations of Streets and Other Public Places.

G. Safety Regulations by the Town. The Town reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and ' welfare of the public. The Company agrees to comply with all such reasonable regulations, now existing or duly adopted, in the construction, maintenance and operation of its Facilities and in the provisions of telecommunications services within the Town.

H. Inspection, Audit and Quality Control. The Town shall have the right to inspect, at all reasonable times, and any portion of the Facilities. The Town also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Ordinance at all reasonable times, but no more than once per year. The Company agrees to cooperate with the Town in conducting the inspection and/or audit and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner. The cost of such audit shall be paid by the Town provided no irregularities are found.

3-12-6 INDEMNIFICATION OF THE TOWN

A. Town Held Harmless/Insurance. The Company shall maintain its Facilities as to afford all reasonable protection against injury or damage to persons or property there from, and the Company shall hold the Town harmless from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the exercise by the Company of the rights and privileges hereby granted, provided such liability or damage was not caused by the Town. The Company shall maintain public liability insurance in an amount not less than One Million Dollars (\$1,000,000.00), and Town shall be identified as a named insured of Company on said public liability insurance. The Company shall furnish evidence from its insurance carrier(s) demonstrating compliance with this section to the Town.

B. Notice to Company. The Town will provide notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim.

C. Payment of Expenses. The Company shall pay for all expenses relating to the publication of notice and ordinances arising out of the process for obtaining this franchise.

D. Franchise Performance Bond.

(1) Concurrent with the execution of this franchise Ordinance, Company shall deposit with the Town a franchise bond acceptable to the Town in the amount of one thousand dollars (\$1,000.00). The franchise bond shall be used to guarantee the faithful performance by Company of all provisions of this franchise Ordinance and the payment by Company of any claims, liens, and operation or maintenance costs of the Facilities.

(2) The franchise bond shall be maintained at one thousand dollars (\$1,000.00) during the entire term of this franchise Ordinance, even if amounts have to be withdrawn pursuant to subsection (1) or (3) of this section.

(3) If the company fails to pay to the Town any compensation within the time fixed herein; or fails to pay to the Town any taxes when due; or fails to repay the Town any damages, costs or expenses which the Town is compelled to pay by reason of any act or default of the Company in connection with this franchise Ordinance; or fails to comply with any provision of this franchise Ordinance which the Town reasonably determines can be remedied by demand on the

franchise bond, the Town may, following fourteen (14) days written notice to the Company, request payment of the amount thereof, with interest and any penalties, from the franchise bond.

(4) The rights reserved to the Town with respect to the franchise bond are in addition to all other rights of the Town, whether reserved by this franchise Ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such franchise bond shall affect any other right the Town may have.

(5) The Town may, in its sole discretion, waive the franchise bond requirement, or reduce the amount required hereunder, or, with the agreement of the Company provide for an alternative form of guarantee, if performance by the Company, its successors or assigns, in the sole opinion of the Town, warrants such revision. The Town may, at any time at its sole discretion, reinstate the requirements of the franchise bond as provided herein.

3-12-7 ASSIGNMENT; SAVING CLAUSE; AMENDMENT

A. Assignment. The Company shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganization of the Company not including a third party, unless the Town shall approve such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.

B. Saving Clause. If any portion of this franchise Ordinance is declared illegal or void by a court of competent jurisdiction, the remainder of the Ordinance shall survive and not be affected thereby. In such case, the parties shall proceed with due diligence to attempt to draft provisions that will achieve the original intent.

C. Amendment. This franchise Ordinance may only be amended by written amendment, signed by both parties.

3-12-8 NON-COMPLIANCE

A. Non-Compliance. No party shall be deemed in non-compliance of this Agreement unless it has been provided notice and opportunity to cure such non-compliance within ninety (90) days of such notice and has not undertaken action towards curing such non-compliance within such period. If either party is in substantial non-compliance with the material the terms or conditions of this franchise Ordinance, the compliant party may obtain any and all relief appropriate, including seeking a judicial decree for specific performance. The successful party in a judicial action seeking relief for breach shall be entitled to its reasonable costs and attorneys fees.

3-12-9 EFFECTIVE DATE

A. Effective Date. This Ordinance shall become effective as a permanent ordinance thirty (30) days after Publication following final passage.

INTRODUCED AND READ BY THE BOARD OF TRUSTEES OF THE TOWN OF SILVERTON, COLORADO, AT ITS REGULAR MEETING HELD AT THE TOWN OF SILVERTON, ON THE 13th DAY OF SEPTEMBER, 2010.

ATTEST:


TOWN CLERK-TREASURER

TOWN OF SILVERTON


MAYOR

FINALLY ADOPTED, PASSED, ORDERED PUBLISHED AND APPROVED ON THIS 11TH DAY OF OCTOBER, 2010.