

ORDINANCE 2023-008

AN ORDINANCE GRANTING TO CONSOLIDATED TELCOM, A COOPERATIVE, AND ITS SUBSIDIARIES, SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF KILLDEER, NORTH DAKOTA, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING A TELECOMMUNICATIONS SYSTEM, WHICH INCLUDES VOICE, VIDEO AND DATA SERVICES OF ANY KIND OR TYPE, WITHIN SAID CITY.

BE IT ORDAINED BY THE CITY COMMISSION OF KILLDEER, NORTH DAKOTA:

Section 1. That Consolidated Telcom, a cooperative, its subsidiaries, successors and assigns, is hereby granted the right to use and occupy the streets, alleys and other public places of the City of Killdeer, North Dakota, for a term of fifteen (15) years from the date hereof, for the purpose of constructing, maintaining and operating a telecommunications system, which includes voice, video and data services of any kind or type, within said City.

Section 2. That the rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be conferred upon said City.

Section 3. To the extent that Consolidated Telcom provides video services in the franchise area it shall pay the City of Killdeer a franchise fee of 3% of the Annual Gross Revenues from receipts from subscribers within the City of Killdeer. Annual Gross Revenues shall mean all gross revenues received by Consolidated Telcom from subscribers within the City of Killdeer in connection with the receipt of video services but shall not include any taxes, regulatory or government imposed fees of any kind, or any revenue received by Consolidated Telcom for the delivery of other services, including without limitation, telephony, data transmission, Internet access, interactive services or other broadband information services. This franchise fee shall be paid on a monthly basis within thirty (30) days after the end of calendar month.

Section 4. That Consolidated Telcom shall provide basic cable service at no cost to public and parochial elementary and secondary schools within Killdeer city limits at one terminal junction per school for educational purposes upon the request of the school system.

That Consolidated Telcom shall provide basic cable service at no cost to one (1) City owned building other than a hospital, nursing home, apartment or airport building, to be selected by the City Commission of Killdeer. This will include one terminal junction to said building and all television sets connected within such building to said terminal junction.

That Consolidated Telcom shall, to the extent technically feasible by its delivery system without significant modification or upgrade, allocate one channel to the City as a public, educational or governmental access channel. Until such time as the City files a written request with Consolidated Telcom for fulltime use of the channel, Consolidated Telcom shall have the right to use that portion of the channel capacity that is not being used by the City. Consolidated Telcom shall have a reasonable period of time after notification to vacate its use of the channel.

Section 5. That this ordinance shall be in full force and effect, and shall constitute a binding contract between the City of Killdeer, North Dakota, and Consolidated Telcom, when it shall have been enacted according to the law and when the provisions hereof shall have been accepted in writing by Consolidated Telcom, and such acceptance filed with the City Auditor.

Section 6. The City of Killdeer reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys and public grounds by Grantee. The City of Killdeer will give Grantee reasonable notice of plans for improvements of streets, alleys and public grounds where the City of Killdeer has reason to believe Grantee's electric transmission or distribution systems may be affected by the improvement. If during the period of this franchise the City of Killdeer shall lawfully elect to alter, or change the grade of any street, alley or public grounds, Grantee upon reasonable notice by the City of Killdeer, at its own expense may remove, relocate, rearrange its electric transmission or distribution facilities that would be a substantial interference with the change to the street, alley or public grounds, provided, however, if relocation, removal or rearrangement of any electric transmission or distribution facility is made necessary to accommodate construction of a project on a federal aid highway or extension thereof within the City of Killdeer, Grantee shall be paid the costs of the relocation, removal or rearrangement in accordance with the laws of the State of North Dakota.

Section 7. Grantee shall indemnify and save and hold the City of Killdeer harmless from any loss or damage due to the construction, installation and maintenance of its distribution system, and its use of the streets, alleys and public grounds of the City of Killdeer. Nothing herein shall impose liability on Grantee for negligent, reckless, or intentional acts or omissions of the City of Killdeer or other parties not under control of Grantee.



Joel Spethman, Commission President

ATTEST:



Matt Oase, City Auditor

First Reading: 05/01/2023
Second Reading: 05/15/2023
Final Passage: 05/15/2023