

CITY OF MAPLE LAKE, MINNESOTA

ORDINANCE NO. 54

AN ORDINANCE GRANTING A FRANCHISE TO LAKEDALE TELEPHONE COMPANY TO CONSTRUCT, OPERATE, AND MAINTAIN AN OPEN VIDEO SYSTEM AND PROVIDE CABLE/VIDEO SERVICE IN THE CITY OF MAPLE LAKE, MINNESOTA.

RECITALS

1. This Cable/Video Franchise Ordinance ("Franchise") is made and entered into by and between the City of Maple Lake, a municipal corporation of the State of Minnesota ("City") and Lakedale Telephone Company, a Minnesota Corporation ("Grantee").
2. Pursuant to Ordinance No. 38 ("Cable Ordinance"), the City is authorized to grant and issue a non-exclusive Franchise authorizing the Grantee to provide Cable/Video Service and construct, operate, and maintain an Open Video System in the City.
3. Upon evaluation of Grantee's technical, financial, legal qualifications, completion of the Franchise negotiations, and as a result of a public hearing, the City finds that it is in the best interests of the City and its residents to grant and issue the Franchise to Grantee.
4. This Franchise is nonexclusive and is intended to comply with applicable laws and regulations.

THE CITY COUNCIL OF THE CITY OF MAPLE LAKE HEREBY ORDAINS:

SECTION 1. GENERAL PROVISIONS

Section 1.1 Definitions. Unless otherwise defined herein, the terms, phrases, and words contained in this Franchise have the meaning provided in the Cable Ordinance. Terms, phrases and words contained in this Franchise that are not defined here or in the Cable Ordinance will have their normal and customary meaning.

Open Video System (OVS) or System - means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide video service which includes video programming and which is provided to multiple subscribers within a community, provided that the FCC has certified that such system complies with subpart S of Part 76 of its rules (47 CFR §§

76.1500-76.1514).

Section 1.2 Written Notice. All notices, reports, or demands required to be given in writing under this Franchise or the Cable Ordinance must be delivered personally to any officer of Grantee or the City Administrator or deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City of Maple Lake
 Attn: City Clerk
 10 Maple Avenue South
 Maple Lake, Minnesota 55358-0757

If to Grantee: Lakedale Telephone Company
 Attn: CEO/General Manager Gene South
 PO Box 340
 Annandale, MN 55302

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

SECTION 2. GRANT OF FRANCHISE

Section 2.1 Grant.

a. Grantee is authorized to erect, construct, operate and maintain in, along, across, above, over and under the Rights-of-Way, now in existence and as may be created or established during the term of this Franchise any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of an Open Video System in the City. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Open Video System that is not prohibited by federal, state or local law.

b. This Franchise is granted pursuant to the Cable Ordinance. By accepting this Franchise, Grantee agrees to be bound by the terms of the Cable Ordinance. This Franchise is a contract and except as to those changes which are the result fo the City's lawful exercise of its general police powers, the City may not take any unilateral action which materially changes the explicit mutual promises in this contract. In the event of any conflict between the provisions of this Franchise and the Cable Ordinance, the

provisions of this Franchise shall govern.

c. This Franchise shall be nonexclusive and City may grant additional Franchises at any time. The City will not grant an additional Franchise on terms and conditions more favorable or less burdensome than those in this Franchise. The City may impose additional terms and conditions in any additional Franchise.

d. In the event the City grants an additional Franchise that a Grantee believes is more favorable or less burdensome than in this Franchise, the Grantee shall have a right to petition for Franchise amendments to relieve the Grantee of provisions making its Franchise less favorable or more burdensome. The Grantee shall file a petition that:

1. Identifies the competitor(s);
2. Identifies the basis for Grantee's belief that certain provisions of the additional Franchise are more favorable or less burdensome than its existing Franchise;
3. Identifies the Franchise provisions to be amended.

The City shall not unreasonable deny such a petition.

e. Grantee acknowledges the City's right to issue this Franchise.

Section 2.2 Franchise Term. This Franchise will be in effect for a period of fifteen (15) years from the date of acceptance by the Grantee, unless sooner renewed or revoked.

Section 2.3 Service Area.

a. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. The City will notify the Grantee in writing in the event the City annexes any areas that the Grantee will be required to serve.

b. Grantee shall provide Cable/Video service to any customer who receives telephone services from Grantee.

SECTION 3. SYSTEM

Section 3.1 System Capacity. Grantee will continue to operate a Cable/Video System providing a minimum of at least 75 video programmed Channels throughout the term of this Franchise. The System must have return capability and permit

"narrowcasting" as provided in Section 4.2(c).

Section 3.2 Emergency Override/EAS Requirements. The Grantee will implement emergency alert override capability consistent with all applicable federal and state regulations. The Grantee shall immediately, upon request, make its system and Cable/Video Service capabilities available to the City in the event of a local emergency. At a minimum, the Grantee shall ensure that all channels are capable of carrying a brief System-specific message upon demand, consistent with federal law.

SECTION 4. COMMUNITY SERVICES

Section 4.1 Commercial Video Programming. The Grantee will provide broad categories of video programming, including news, sports and entertainment.

Section 4.2 PEG Access Facilities.

a. Access Channels. The Grantee must dedicate two (2) Channels for public, education, and government access (hereinafter "PEG Access") programming. The two (2) PEG Access Channels must be cablecast on the Basic Cable/Video Service tier. All Subscribers who receive Cable/Video Services offered on the System must receive the PEG Access Channels at no additional charge. Nothing herein shall diminish the City's rights to secure additional channels pursuant to Minn. Stat. § 238.084, Subd. 1(z), and applicable FCC regulations.

b. Responsibility for PEG Access. City will operate, administer, and manage PEG Access programming pursuant to this Section 4.2 and the following:

1. PEG Access Capital Support. In addition to the requirements of Section 4.2(a)-(d) above, the City may require Grantee to collect and remit a PEG Capital Fee of up to eighty-five cents (\$.85) per Subscriber, per month to support community programming. The Grantee shall remit such payments on the same schedule as the Franchise Fee. All amounts paid shall be subject to audit and recomputation and acceptance thereof does not constitute an accord that amounts paid are correct. The Grantee must be notified in writing on or before October 1st of the amount of the PEG Capital Fee to be effective on January 1st of the following year. If the City fails to provide the written notification required herein by October 1st, then the PEG Capital Fee for the following calendar year shall be set at \$0.00. Grantee may itemize any PEG Capital Fee on

Subscriber's bills. Payment by Grantee must be separate from and in addition to any Franchise Fee. The City and Grantee (and any other Grantee of a cable/video franchise) shall jointly fund and sponsor a Subscriber survey during the fifth and tenth years of this Franchise for the purpose of assessing Subscriber satisfaction with PEG Access programming and the levels of financial support that Subscribers are willing to provide. Upon completion of the survey, the City and Grantee shall meet to discuss the level of support for PEG Access programming and enter into good faith discussions regarding revisions to this Section that may be appropriate in light of the survey.

2. Use of PEG Capital Fee. The City and Grantee agree that the City will expend the PEG Capital Fees solely for capital costs (consistent with GAAP) associated with PEG Access. In consideration for Grantee's obligation to remit the PEG Capital Fee, the City agrees to provide financial support for PEG Access that is equivalent to the amount of PEG Capital Fees collected and provided to the City. By March 31st of each year, the City shall provide Grantee with an annual report of any expenditures of the PEG Access Capital Fee to insure such fees are used for capital costs related to PEG Access. The annual report shall also demonstrate how the City fulfilled its requirement to provide matching support for PEG Access. Based on the report, the Grantee may send a written notice to the City alleging that the City failed to demonstrate that the PEG Capital Fee was used for capital or that matching PEG Access support was provided. The City shall have thirty (30) days after receipt of the written notice to provide additional information demonstrating compliance with the requirements of this Section. If the Grantee continues to allege that the City has not complied with its obligations herein, the Grantee may provide written notice of its intent to reduce and/or discontinue collecting and remitting the PEG Capital Fee. If the City disputes the Grantee's actions, it may initiate any enforcement action under the Cable Ordinance it deems appropriate.

3. Access Rules. The City may implement rules governing PEG Access Channels and programming.

c. Narrowcast. The Grantee must ensure that at least one (1) PEG Access Channel permits the City to "narrowcast" programming; i.e. permits a program to be

video-cast on such Channel for viewing solely by City residents while residents in adjoining cities served by the Grantee simultaneously view other programming on that Channel.

d. Live Origination. The Grantee must ensure that live programming may be originated and video-cast from the public institutional sites listed in Exhibit A attached provided however, that the Grantee shall only be required to pay the cost of the first one hundred and fifty (150) feet of any new System construction necessary to permit live origination at such site and shall not be required to provide end-user equipment. The City may designate additional live programming sites. The City shall pay any additional, actual construction cost prior to additional construction and shall be responsible for the provision of end-user equipment. The Grantee must ensure that the System meets the technical standards attached as Exhibit B at all live origination sites. The Grantee must further ensure that the City can "narrowcast" programming originated from all of the sites designated pursuant to this paragraph.

e. PEG Support, Facilities, and Equipment.

1. The City acknowledges that under 47 C.F.R. § 76.1505 governing the provision of PEG programming by an OVS operator, the incumbent local cable operator must permit the Grantee to connect with its PEG access channel feeds. The Grantee and the incumbent local cable operator may enter into an agreement concerning such interconnection and sharing of PEG feeds. However, the Grantee is not required to interconnect with the incumbent local cable operator. The Grantee may instead arrange to obtain all PEG programming feeds, including live programming feeds, at a location or locations under the control of the City or its PEG Access designee. The costs of completing such connection shall be borne by the Grantee.

f. City Resolution of PEG Disputes.

1. In accordance with 47 C.F.R. § 76.1505, the Grantee may negotiate with the incumbent local cable operator concerning PEG-related issues or obligations. If, after good-faith negotiations, the Grantee or local cable operator notify the City in writing that PEG-related matters remain in dispute, a public hearing before the City Council shall be scheduled affording the Grantee and local cable operator any opportunity to be heard and/or submit written information.

2. The City will decide any disputed PEG-related issues in accordance with the following principles:
 - a. State and federal law (Minn. Stat. § 238.08, Subd. 1(b); 47 U.S.C. § 573(c)(2)(A)) require the City to impose and the Grantee to accept PEG obligations that are no greater or lesser than the incumbent cable operator's obligations on a per-subscriber basis so that PEG service to the community is improved;
 - b. Federal law (47 C.F.R. § 76.1505(d)(1); *CTC Telecom Inc. v. City of Rice Lake*, DA 02-1720 (MB 2002)) precludes the City from requiring the Grantee to match PEG contributions made by the local cable operator prior to the Grantee's commencement of service in the City, and;
 - c. As long as the Grantee meets PEG obligations that are no greater or lesser than the incumbent cable operator's obligations on a per-subscriber basis, precise duplication of in-kind PEG contributions such as the provision of program origination capacity will be unnecessary.

h. Parity of Obligations. The City will impose equivalent PEG Access obligations on any other franchised provider of Cable/Video Service in the City to the extent provided by law.

Section 4.3 Drops and Service to Public Buildings.

a. The Grantee must provide monthly Basic Cable/Video Service and Cable/Video Programming Service (excluding pay-per-channel or pay-per-program) and install one (1) Drop and one (1) outlet without charge to the public institutional sites listed in Exhibit A attached. The programming provided by Grantee is not for public display. The City shall hold the Grantee harmless for any copyright, or other penalties, incurred due to improper use of free service. The Grantee shall not be required to provide video gateway.

b. The Grantee must provide a Drop, outlet and Basic Cable/Video Service and Cable/Video Programming Service to such other accredited public schools or public administration buildings as the city may subsequently designate, provided however, that the Grantee shall only be required to pay the cost of the first one hundred and fifty (150)

feet of any necessary System construction. The City or institution shall pay any additional actual construction cost. The Grantee will have a reasonable time from the designation of additional sites to complete extension. Additional Drops and/or outlets at institutional locations must be provided by Grantee at the cost of Grantee's time and material. Alternatively, institutions may add outlets at their own expense.

SECTION 5. ADMINISTRATION PROVISIONS

Section 5.1 Franchise Fee

a. The Grantee shall pay a Franchise Fee to the City in an amount equal to five percent (5%) of its Gross Revenues. The Grantee shall remit Franchise Fee payments to the City on a quarterly basis within 60 days of the close of the preceding calendar quarter. Payments shall be based on Gross Revenues generated during the preceding quarter.

b. Each Franchise Fee payment must be accompanied by a report in form reasonably acceptable to City detailing the computation of the payment. All amounts paid are subject to audit and recomputation by the City, and acceptance of any payment must not be construed as an accord that the amount paid is in fact the correct amount. In accordance with Minn. Stat. § 541.05, any action to recover Franchise Fees must be commenced within six (6) years of receipt of the Franchise Fee payment or due date for such payment.

c. In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from such due date, at the annual rate of one percent over the prime interest rate.

Section 5.2 Rules of Grantee. The Grantee may promulgate such rules, terms and conditions governing the conduct of its business provided that such rules, terms and conditions must not be in conflict with the provisions of this Franchise, the Cable Ordinance, or applicable laws or regulations.

SECTION 6. INDEMNIFICATION, INSURANCE, BONDS AND SECURITY FUND

Section 6.1 Indemnification. By acceptance of this Franchise, the Grantee agrees to indemnify, defend, and hold the City harmless in accordance with the Cable

Ordinance.

Section 6.2 Insurance. At the time of acceptance of this Franchise, the Grantee will file with the City a Certificate of Insurance in accordance with the Cable Ordinance. The Grantee must maintain such insurance for the entire term of this Franchise.

Section 6.3 Performance Bond.

a. The Grantee must furnish to the City, for the benefit of the City, a performance bond in the amount of Ten Thousand Dollars (\$10,000.00) in a form and substance reasonably acceptable to the City. At the time of acceptance of this Franchise, the Grantee will file with the City an evidence of receipt of such bond. The Grantee must maintain the bond until this Franchise expires or is terminated, and the Grantee has liquidated all of its obligations with the City.

b. The bond shall be conditioned upon Grantee's faithful performance in accordance with the terms of this Franchise, the Cable Ordinance, and applicable laws and regulations. The bond must provide that in the event the Grantee fails to comply with any law, ordinance or regulation, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the security, will be recoverable jointly and severally from the principal and surety of the bond and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise. In the event this Franchise is revoked or the rights hereunder relinquished or abandoned by Grantee, the City is entitled to collect any resultant damages, costs or liabilities incurred by the City.

c. The City and Grantee acknowledge that it may be difficult or impossible to accurately quantify actual damages or losses suffered by the City due to a violation or unsatisfied obligation under this Franchise, the Cable Ordinance, or applicable laws or regulations. Such violations or unsatisfied obligations may, however, be presumed to harm the City and the public's interest. Accordingly, the City may, in its reasonable discretion, collect liquidated damages in an amount of up to Two Hundred and Fifty Dollars (\$250.00) per violation of any provision of this Franchise, the cable Ordinance, or applicable laws or regulations. Each violation may be considered a separate violation for which separate liquidated damages can be imposed.

d. In the event the City will make any claim against the bond, the City must comply with Section 14 of the Cable Ordinance governing enforcement of this Franchise.

e. The City's rights herein are in addition to all other rights the City may have and the City's exercise of such rights does not constitute an exclusive remedy nor limit any other right.

Section 6.4 Construction Bond.

a. During periods in which System construction, rebuild, upgrade or line extension costs are expected to exceed Fifty Thousand Dollars (\$50,000.00), Grantee shall provide a construction bond in an amount mutually agreed upon.

b. Upon completion of System construction requiring provision of a construction bond, the Grantee must provide written notice to City. Within thirty (30) days of receipt of such notice, the City must notify the Grantee whether the construction is complete or specify those items that are not complete. The City may enforce the construction bond if such items of construction are not thereafter completed within thirty (30) days. Upon completion of construction or satisfaction of any items determined to be incomplete, the construction bond shall be returned to Grantee.

c. In the event the City will make any claim against the construction bond, the City must comply with Section 14 of the Cable Ordinance governing enforcement of this Franchise.

d. The City's rights pursuant to the construction bond are in addition to all other rights the City may have. Any action with respect to the construction bond does not constitute an exclusive remedy nor limit any other right.

SECTION 7. MISCELLANEOUS REQUIREMENTS

Section 7.1 Amendment of Franchise Ordinance. The Grantee and the City may mutually agree, from time to time, to amend this Franchise. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the City and the Grantee. Nothing herein is intended to expand or diminish the rights given to City under state law. The City reserves its lawful rights, including its police powers, ordinance-making authority, and under power of eminent domain law.

Section 7.2 Force Majeure. In the event Grantee's performance of this Franchise is prevented due to a cause beyond its reasonable control, such failure to perform must be excused for the period of such inability to perform.

Section 7.3 Severability. If any term, condition or provision of this Franchise or

the application thereof to any Person or circumstance is held, to any extent, invalid, preempted or unenforceable, the remainder and all the terms, provisions and conditions herein must, in all other respects, continue to be effective provided the loss of the invalid preempted or unenforceable provisions do not substantially alter the agreement between the Parties. In the event a law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the Franchise provision which had been held invalid, preempted to modified is no longer in conflict therewith, such Franchise provision will return to full force and effect and thereafter be binding upon thirty (30) days written notice to the Grantee.

Section 7.4 Nonenforcement by City. The Grantee is not relieved of its obligations to comply with this Franchise or the Cable Ordinance due to any failure or delay of the City to enforce prompt compliance. The City and Grantee may only waive its rights by expressly so stating in writing.

Section 7.5 Rights Cumulative. All of the City's and Grantee's rights and remedies pursuant to this Franchise are in addition to and not exclusive of any and all other rights and remedies available to the City or Grantee.

Section 7.6 Work Performed by Others. All obligations of this Franchise apply to work performed by any agent, subcontractor or other Person performing any work or services on behalf of the Grantee pursuant to this Franchise to the extent applicable, however, in no event will any such Person obtain any rights to maintain and operated a System or provide Cable Service.

Section 7.7 Entire Agreement. This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations, and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

SECTION 8. ACCEPTANCE OF FRANCHISE

Section 8.1 Publication and Effective Date. This Franchise will be effective on the date of acceptance by Grantee. This Franchise shall be enacted and published in accordance with applicable local and Minnesota law.

Section 8.2 Time for Acceptance.

a. The Grantee must accept this Franchise within sixty (60) days of enactment by the City, unless the time for acceptance is extended by the City. Acceptance by the Grantee will be deemed the grant of this Franchise for all purposes.

b. Upon acceptance of this Franchise, the Grantee and City will be bound by all the terms, conditions and obligations contained herein.

Section 8.3 Manner for Acceptance. The Grantee must accept this Franchise in the following manner:

a. The Franchise must be fully executed and acknowledged by Grantee and delivered to the City.

b. The Grantee must also deliver any performance bond and insurance certificates required herein that have not previously been delivered, with its acceptance.

Section 8.4 Failure to Accept. In the event the Grantee does not timely accept this Franchise in accordance with the requirements herein, this Franchise and all rights granted herein are null and void.

Passed and adopted this _____ of _____, 2006.

CITY OF MAPLE LAKE

By _____
Michael D. Messina, Mayor

*Signed copy in
Lakewood file.*

ATTEST:

By _____
Linda E. Hruby, City Clerk

ACCEPTED: This Franchise is accepted and we agree to be bound by its terms and

conditions.

Dated: _____

LAKEDALE TELEPHONE COMPANY

By _____

Its _____

EXHIBIT A

(Live Origination and Free Service Sites)

Maple Lake

Downtown	Corner of Division and Birch Maple Lake 55358	Live/Drop
Maple Lake Community Park	Division and Ash Maple Lake 55358	Live/Drop
City Hall	10 Maple Ave. Maple Lake 55358	Live/Drop

EXHIBIT B

(Technical Standards - Live Origination Sites)

With respect to all sites listed in Exhibit A, the System shall meet or exceed the following requirements:

1. The System shall operated in conformance with the technical standards promulgated by the FCC pursuant to Title 47, Section 76.601 to 76.617, as may be amended to modified from time to time.
2. The System shall be capable of continuous 24-hour operation without signal degradation.
3. The System shall be capable of operation without failure, material performance changes or signal degradation over an outdoor temperature range of -40 degrees F to +130 degrees F and over a variation in supply voltages from 105 to 130 volts AC.
4. The System will provide access channel connections up to the demarcation point, both upstream and downstream, without material signal degradation or deterioration and with signal quality equal to or better than any other channels. Material signal degradation or deterioration where any signal problem including ghosting or other audio or visual distortion or interference is apparent without special testing. The Grantee shall not be responsible for technical problems deriving from facilities or equipment located beyond the demarcation point, within the institutional site.