

TITLE XIV.
FRANCHISES

CHAPTERS:

14-01. Cable Television Franchise.

CHAPTER 14-01

CABLE TELEVISION FRANCHISE.

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14-0101. **TITLE.** This Ordinance shall be known and may be cited as the "Midcontinent Cable Television Ordinance," and is sometimes referred to as the "franchise."

14-0102. **DEFINITIONS.** For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein, when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular include the plural number, The word "shall" is always mandatory and not merely directory,

1. "Basic Cable Service" means the service tier which includes the retransmission of local television broadcast signals.
2. "City" is the City of Harwood, North Dakota

3. "Council" or "City Council" is the City Council of the City of Harwood, North Dakota.
4. "Cable Television System" or "Cable System" is a system utilizing certain electronic and other components which deliver to subscribing members of the public various video or communications services.
5. "Cable Television Reception Service" means the delivery by the Grantee to television receivers or any other suitable type of electronic terminal or receiver of the electronic signals and other communications services carried over said system including VDSL services.
6. "FCC" shall mean Federal Communications Commission.
7. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
8. "Grantee" is Midcontinent Communications ("Midcontinent") or anyone who succeeds Midcontinent in accordance with the revisions of this Ordinance.
9. "Subscribers" are those persons to receive cable television reception services furnished under this ordinance by Grantee.

14-0103. **GRANT OF NON-EXCLUSIVE AUTHORITY.** There is hereby granted by the City to the Grantee, and to its successors, assigns or designees, the non-exclusive right to erect, maintain and operate in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses and other public places in the City of City of Harwood, North Dakota, and subsequent additions thereto; towers, poles, lines, cables, wires, manholes, and all other fixtures and equipment necessary for the maintenance and operation in the City of a cable television system, for the purpose of transmission and distribution of audio, visual, electronic and electric impulses in order to furnish television and radio programs and various other communications services to the public for a period of ten (10) years, commencing from and after the effective date of this Ordinance.

14-0104. **COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.** The Grantee shall, during the term hereof, except in those areas which have been preempted by the Acts, Laws, and regulations of the Government of the United States, be subject to all lawful exercise of the regulating and police powers of the City.

14-0105. **TERRITORIAL AREA INVOLVED.**

1. This Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of this Ordinance.
2. Grantee may, but shall not be required to, serve areas or individual homes adjoining, but outside the City limits and that may be served from its existing

facilities. Grantee may negotiate directly with such customers the amount to be charged for the bringing of the service to the customer.

3. Services provided by the Grantee under this franchise shall be made available to all points within the Service Area during the term of this franchise under the following conditions:
 - a. Whenever the Grantee shall receive a request for service from at least 30 residences within 1,320 cable-bearing strand feet (one-quarter mile) of its hunk or distribution cable, it shall extend the Cable System to such Subscribers at no cost to said Subscribers for the extension, other than the usual connection fees for all Subscribers, provided that such Cable System extension is technically feasible and provided such an extension will not adversely affect the operation, financial condition, or market development of the Cable System or as provided for under subsection b, below.
 - b. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as Subscriber's request to locate his cable drop underground in an area where other installations is done in an aerial manner or a distance of greater than 200 feet from the distribution cable to the connection of service to Subscriber, or a density of less than 30 residences per 1,320 cable-bearing strand feet (one-quarter mile) of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of materials, labor, and access to easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in an area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1,320 cable-bearing strand feet of its hunks or distribution cable, and whose denominator equals 30 residences.
 - c. Subscribers who request service hereunder may bear the remainder of the construction and other cost on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction to be borne by such potential Subscribers be paid in advance.

14-0106. **TECHNICAL STANDARDS.** Grantee shall be governed by technical standards established by the FCC.

14-0107. **OPERATION AND MAINTENANCE OF SYSTEM**

1. Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest possible time. Such interruption, insofar as possible, shall be preceded by notice and shall occur during minimal use of the system.

2. All service requests and complaints should generally be responded to within twenty-four (24) hours of receipt.

14-0108. **SAFETY REQUIREMENTS.** The Grantee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries, or nuisances to the public.

14-0109. **BUILD-OUT - NEW DEVELOPMENTS.** The City shall agree to amend this franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently, or economically serve its customers. Provided, however, that this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

With regards to buildouts for new developments:

1. Subject to the line extension provisions of Section 14-0105, Grantee shall extend cable service to all areas of the City with a density of 30 homes per mile at no cost for cable system extension other than the standard installation fees charged to all subscribers, and in accordance with its franchise and consistent with the rules and guidelines of the FCC.
2. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give all Grantees at least 14 days' written notice to Grantees of the construction or development, and of the particular date on which open trenching will be available for Grantee's installation of conduit and/or cable. A Grantee shall provide specifications as needed for trenching.
3. Should the Grantee determine that line extension is economically unfeasible, the Grantee and the developer agree to negotiate in good faith toward an equitable agreement. If the Grantee and the developer arrive at impasse, disputes over the extension shall be mediated by the City Council 30 days after receipt of written request by either party.

14-0110. **LIMITATIONS ON RIGHTS GRANTED.**

1. All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Grantee whenever the City reasonably finds that the same restricts or obstructs the operation or location of any future streets or public places in the City Harwood, North Dakota.

2. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located, erected, and maintained so as not to endanger or interfere with the lives of persons, or to interfere with any installations of the City or of a public utility serving the City, or to interfere with new improvements the City may deem proper to make.
3. In the maintenance and operation of their television transmission and distribution system in the streets, alleys, and other public places, and in the course of any new construction or addition to their facilities, Grantee shall proceed so as to cause the least possible inconvenience to the general public: any opening or obstruction in the streets or other public places made by Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boarding's, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning indicators.
4. All work in any way necessitated by the business of Grantee which may involve the opening, breaking up or tearing up of a portion of a street, sidewalk, or other part of any City-owned or City-controlled property shall at the option of the City be done by the City at the expense of Grantee. In the event the City does not exercise its option, in case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall at its own expense and in a manner approved by the City, replace and restore such street, sidewalk, alley, public walk, or paved area in as good as condition as before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.
5. If at any time during the period of this Ordinance the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
6. All installations of equipment shall be in accordance with good engineering practices, and of sufficient height to comply with all existing City regulations, ordinances and state laws so as not to interfere in any manner with the right of the public or individual property owner, and any equipment in a public way or public place shall not interfere with the usual travel on such public way or usual use of such public place by the public and, during the construction, repair or removal thereof, shall not unduly obstruct or impede traffic.
7. The Grantee shall, on the request of any person holding a building moving permit issued by the City or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than fourteen (14) days advance notice to arrange for such temporary wire changes.

8. The Grantee shall have the authority to trim trees that are overhanging the streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee, provided that Grantee has been first notified to perform such trimming and has unreasonably refused to do so. Trimming shall be done in accordance with any city requirements regarding such trimming.
9. In all sections of the City where the City designates an area where all presently above ground services are to be placed underground, the Grantee shall place its wires underground on the same time schedule on the same conditions that are applicable to the providers of other above ground services in the designated areas.
10. The Grantee shall not allow its cable or other operations to interfere with television receptions of persons not served by the Grantee.
11. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of the street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Grantee shall in all cases have the privilege to abandon any property of Grantee in place as hereinafter provided.
12. 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 system 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, canceled or have expired, Grantee shall, subject to the rights of the City to acquire or transfer the system as specified in Section 14-0114 promptly remove all above ground facilities, wires, etc. from the streets and public places 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 said property has been removed to a condition satisfactory to the City.
13. 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.

14-0111. **OWNERSHIP AND REMOVAL OF FACILITIES.** Except as otherwise agreed in writing at the time of installation, 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. Grantee shall have the right, at any time, to disclaim any further ownership rights to the interior wiring and the subscriber. Once such a notice is given, the interior wiring and any equipment or fitting specified in the notice shall become the property of the subscriber without any payment obligations on the part of the subscriber. Provided, however, the Grantee shall have the right, when it is providing service to the premises, to use said interior wiring and specified equipment without charge.

14-0112. **ASSIGNMENT OF ORDINANCE.** The Grantee shall not assign rights obtained under this Ordinance to another person without prior approval of the City Council, which approval shall not be unreasonably withheld. This provision shall not apply to assignment of rights to a parent, subsidiary, or affiliate of the Grantee.

14-0113. **DURATION AND RENEWAL OF ORDINANCE.** The rights granted to the Grantee herein shall, except as provided in this Section, terminate ten (10) years from the effective date of this Ordinance which Ordinance shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984, as amended, applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, the Ordinance shall remain in effect even if the original ten (10) year term has expired.

If this Ordinance is not renewed, or if it is revoked for cause by the City, the transfer of Grantee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984, as amended.

14-0114. **ERECTION, REMOVAL AND COMMON USE OF POLES.**

1. There is hereby granted to the extent that the City is authorized to so do, the right and authority to Grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from the City and all other holders of public licenses and franchises within the corporate limits of the City, to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the City.

It is the stated intention of the City that all other holders of public licenses and franchises within the corporate limits of the City shall cooperate with Grantee to allow Grantee's joint usage of their poles and pole-line facilities whenever possible or wherever such usage does not interfere with the normal operation of said poles and pole-lines so that a number of new or additional poles constructed by Grantee within the City may be minimized. The annual rental for the use of City poles shall be set by the Council by resolution and separate agreement.

2. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City with regard to location, 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 City Council or its designated representative determines that the public convenience would be enhanced thereby.

3. Grantee shall grant to the City, free of expense, joint use of any and all poles owned by it for any proper municipal purpose acceptable to Grantee, insofar as it may be done without interfering with the free use and enjoyment of Grantee's own wires and fixtures, and the City shall hold Grantee harmless from any and all actions, causes of actions and damages caused by the placing of the City's wires or appurtenances upon the poles of the Grantee. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the City's joint use of their poles, Grantee is required to change or replace poles or install new poles, the City shall compensate for such additional expense.
4. Where a public utility serving the City desired 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.

14-0115. **RATES.**

1. Grantee shall at all times maintain a website a schedule setting forth rates and charges to be made to subscribers for basic cable service, including installation charges.
2. During the term hereof, and if required by the FCC, Grantee shall comply with the rate regulations of the Federal Communications Commission.
3. The monthly rate set forth in the schedule filed pursuant to subsection 1 above shall be payable in advance.
4. The Grantee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984, as amended, if applicable and Federal Communications Commission regulations.

14-0116. **PAYMENT TO THE CITY.**

1. Grantee will pay Franchising Authority a monthly franchise fee in the amount of three (3%) percent of Grantee's Gross Revenues.
2. The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.
3. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by Grantee is due.

"Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by the subscribers for basic cable service. Gross receipts shall not include revenues received as installation charges, and fees for reconnections, inspections, repairs or modifications of any installation, all state and federal taxes relating thereto, and pay services.

Notwithstanding the annual gross receipts fee or tax payable hereunder, if the Grantee is legally obligated to collect or pay any sales tax or other taxes, the Grantee shall have the right to charge the subscribers an additional amount equal to such tax.

14-0117. **SERVICE TO CITY.** The Grantee shall, subject to the line extension provisions of Section 14-0105, also provide to the City without charge, at two (2) City owned buildings within an area served by Grantee and as amended from time to time, other than a hospital, nursing home, apartment or building at the airport, one junction terminal to said building and shall also furnish to the building, without charge, basic service to all sets connected within such building to the terminal junction.

Exhibit A shall provide a listing of the current two (2) locations which may be served by Grantee under this Section.

14-0118. **PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS.** If requested, the Grantee shall 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 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.

14-0119. **EMERGENCY USE OF FACILITIES.** In the case of any emergency or disaster, the Grantee shall, upon request of the Council, make available its facilities to the City for emergency use during the emergency or disaster.

14-0120. **MISCELLANEOUS.** Grantee's legal, financial, technical, and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the Council after consideration in a full public proceeding affording due process to all interested parties.

14-0121. **MODIFICATION OF OBLIGATIONS.** In addition to any other remedies provided by law or regulation, Grantee's obligations under this Ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications

Policy Act of 1984 as it now exists, or as hereafter amended, replaced, or superseded by other Act of Congress.

14-0122. **LIABILITY AND INDEMNIFICATION.** Grantee shall, at all times, keep in effect the following types of insurance coverage:

1. Worker's Compensation upon its employees engaged in any maimer in the installation or servicing of its plant and equipment within the City.
2. Property Damage Liability insurance to the extent of one million dollars (\$1,000,000) as to each occurrence and five million dollars (\$5,000,000) aggregate, and personal injury liability insurance to the extent of one million dollars (\$1,000,000) as to each occurrence and five million dollars (\$5,000,000) aggregate.
3. The Grantee agrees to indemnify, save, and hold harmless, and defend the City, its officers, boards, and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its cable system, including, but not limited to, reasonable attorney's fees and costs.

These damages or penalties shall include, but shall not be limited to, damages arising out of copyright, infringements, and all other damages arising out of the installation, operation, or maintenance of the cable television system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this ordinance.

14-0123. **SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or is superseded or preempted by FCC regulation, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.