

AN ORDINANCE GRANTING TO MIDCONTINENT CABLE SYSTEMS CO. OF NORTH DAKOTA THE NONEXCLUSIVE RIGHT TO ERECT, MAINTAIN AND OPERATE IN, UNDER, OVER, ALONG, ACROSS THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, EASEMENTS DEDICATED FOR COMPATIBLE USES AND OTHER PUBLIC PLACES IN THE CITY OF HEBRON, NORTH DAKOTA, AND THE SUBSEQUENT ADDITIONS THERETO, TOWERS, POLES, LINES, CABLES, WIRES AND OTHER APPARATUS FOR THE PURPOSE OF TRANSMISSION AND DISTRIBUTION BY CABLE OF TELEVISION SIGNALS TO ENABLE SALE OF ITS COMMUNITY TELEVISION ANTENNA SERVICE TO INHABITANTS OF SAID CITY, AND OTHER VARIOUS PURPOSES, FOR A PERIOD OF FIFTEEN (15) YEARS REGULATING THE SAME AND PROVIDING FOR COMPENSATION OF THE CITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEBRON, NORTH DAKOTA.

SECTION I. - TITLE

This Ordinance shall be known and may be cited as the "Hebron Community Antenna Television Ordinance."

SECTION II. - DEFINITIONS

For the purposes 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 number 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 broadcast signals.
2. "City" is the City of Hebron, North Dakota.
3. "Council" is the City Council of Hebron, 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 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.

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 Cable Systems Co. of North Dakota or anyone who succeeds Midcontinent Cable Systems Co. of North Dakota in accordance with the provision of this Ordinance.
9. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Ordinance by Grantee.

SECTION III - GRANT OF NON-EXCLUSIVE AUTHORITY

1. 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 Hebron, 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 by what is commonly called a Community Antenna Television System, for a period of fifteen (15) years, commencing from and after the effective date of this Ordinance.

2. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive.

SECTION IV - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Grantee shall, during the term hereof, except in those areas which have been preempted by the Cable Communications Policy Act of 1984 or which are regulated by the Federal Communications Commission, be subject to all lawful exercise of the regulating and police powers of the City.

SECTION V - TERRITORIAL AREA INVOLVED

This Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of

this Ordinance. Grantee shall not be required to service residents of newly annexed areas of the City that are beyond four hundred feet (400') from existing distribution lines except upon payment by such residents of the capital costs incurred by the Grantee in bringing service to such residents. Grantee may, but shall not be required to, serve areas or individual homes adjoining, but outside the City limits, 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.

SECTION VI - LIABILITY AND INDEMNIFICATION

Grantee shall, at all times, keep in effect the following types of insurance coverage:

(a) Workmen's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Hebron, North Dakota.

(b) Property Damage Liability insurance to the extent of Two Hundred Fifty Thousand Dollars (\$250,000.00) as to each occurrence and Two Hundred Fifty Thousand Dollars (\$250,000.00) aggregate, and personal injury liability insurance to the extent of Five Hundred Thousand Dollars (\$500,000.00) as to each occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Excess bodily injury and property damage of One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate. Automobile bodily injury and property damage liability combined One Million Dollars (\$1,000,000.00) each occurrence.

Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workman's Compensation law which may arise out of the erection, maintenance, presence, use or removal of said attachments or poles within the City, or by any act of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workmen's Compensation laws in effect that may be applicable to grantee. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be deposited with and kept on file by the City.

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.

SECTION VII - GENERAL SYSTEM SPECIFICATIONS

The facilities used by the Grantee shall have a minimum capacity of 20 channels. The facilities shall also be capable of distributing color television signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

SECTION VIII - TECHNICAL STANDARDS

Grantee shall be governed by technical standards established by the FCC.

SECTION IX - OPERATION AND MAINTENANCE OF SYSTEM

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

2. All service requests and complaints should be responded to within 24 hours of receipt.

SECTION X - SERVICE TO SCHOOLS AND CITY

The Grantee shall, subject to the line extension provisions of Section V, provide basic cable service at no cost to public and parochial elementary and secondary schools within the City, at one terminal junction for educational purposes upon request of the school system.

Grantee shall, subject to the line extension provisions of Section V, also provide to the City without charge, at one City owned building other than a hospital, nursing home, apartment or building at the airport, to be selected by the Council of Hebron, 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.

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 noti-

fication to vacate its use of the channel. Grantee shall assist the City in obtaining the necessary licenses and frequency clearance to enable the City to use said channel.

SECTION XI - EMERGENCY USE OF FACILITIES

In the case of any emergency or disaster, the Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster. If the City wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to the City and Grantee and provides Grantee with the necessary equipment for such system, Grantee will permit the system to be used on the cable system.

SECTION XII - 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.

SECTION XIII - 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 Public Works Superintendent or Engineer reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places in the City of Hebron, North Dakota.

2. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable Ordinances and regulations of the City of Hebron, North Dakota, affecting electrical installation, which may be presently in effect, or changed by future Ordinances.

3. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in manner approved by the City Public Works Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or paved areas in as good a condition as before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.

4. 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.

5. 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 removal 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 forty-eight (48) hours advance notice to arrange for such temporary wire changes.

6. 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.

7. 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 establishments of street grade, installation of sewers, drains, waterpipes, 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 privileges and be subject to the obligations to abandon any property of Grantee in place as hereinafter provided.

8. 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 and on the same conditions that are applicable to the providers of other above ground services in the designated areas. Where the City has not made such a designation, if a subscriber requests that his cable television service drop be placed underground, the cost of placing the service underground and the surface restoration costs shall be paid by the subscriber. The subscriber shall also be responsible for the payment of the difference between the cost of a repair had the

service drop been above ground and the cost of the underground repair, and, in addition, the cost of the surface restoration. If Grantee places the service underground for its convenience rather than at the subscriber's request, or does so pursuant to a City designation as provided herein, then the cost of doing so as well as the cost of restoration and repairs shall be the sole obligation of the Grantee.

9. 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 systems 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, cancelled or have expired, Grantee shall, subject to the rights of the City to acquire or transfer the system as specified in Section XVIII, promptly remove from the streets, or public places all such property and poles of such system 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 such property has been removed to a condition satisfactory to the City.

10. 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.

SECTION XIV - OWNERSHIP AND REMOVAL OF FACILITIES

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. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

SECTION XV - TRANSFER OF ORDINANCE

The Grantee shall not assign this Ordinance to another person without prior approval of the City Council, which approval shall not be unreasonably withheld.

SECTION XVI - PAYMENT TO THE CITY

During the term of the rights granted hereunder, and so long as the Grantee operates said system, the Grantee shall pay, as compensation to the City a sum equal to three percent (3%) of the annual total gross receipts of the cable system. "Gross Receipts" shall consist of those revenues derived from the

monthly service charges paid by subscribers residing within the corporate limits of the City for basic cable service and premium pay services, such as HBO. Gross receipts shall not include revenues received as installation charges, and fees for reconnections, inspections, repairs or modifications of any installation, or State and Federal taxes relating thereto.

The payments that Grantee makes to the City shall be in lieu of any occupation tax, license tax, or similar levy by the City and shall be paid on a monthly basis based on the preceding years gross subscriber revenues. Upon completion of Grantee's audit, Grantee shall pay to the City within 15 days, the balance due, if any, for the operating year covered by the audit.

This amount payable by the Grantee to the City shall be the sole amount payable for all of its rights under this Ordinance including, but not limited to, the use of the streets and other facilities of the City in the operation of the Cable System and for the municipal supervision thereof and shall be in lieu of any other occupational tax.

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.

SECTION XVII - DURATION AND RENEWAL OF ORDINANCE

The rights granted to Grantee herein shall, except as provided in this Section, terminate fifteen (15) 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 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 fifteen (15) 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.

SECTION XVIII - ERECTION, REMOVAL AND COMMON USE OF POLES

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, 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.

2. Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

3. Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the City 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.

SECTION XIX - RATES

1. Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including installation charges.

2. During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

In the event that the City has authority to regulate rates, the following procedures shall be used:

(a) Before making any changes in the rates and charges to subscribers for basic CATV service, Grantee shall file in writing with the City Auditor a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing, said proposed rate changes shall become effective upon the expiration of the 30-day notice period.

(b) If the Council wishes to hold a hearing on the proposed rate increase, the hearing shall be held within forty-five (45) days of the filing of the proposed rate increase by Grantee. Following the hearing, the Council shall take final action on the proposed increase within thirty (30) days.

3. Any rate subject to regulation under the above provisions may be increased without the approval of the City, at the discretion of Grantee by an amount not to exceed five percent (5%) per calendar year. In addition, Grantee shall have the right to pass along to subscribers state and local sales taxes, programming cost increases and copyright fee increases.

4. The monthly rate set forth in subsection 1 above shall be payable in advance.

5. 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 and Federal Communications Commission regulations.

SECTION XX - MISCELLANEOUS

1. 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 persons.

2. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy a Complaint, it may then be directed to the Auditor for investigation. The complaining party and Grantee shall be afforded a reasonable opportunity to present written statements of their position. The Auditor shall attempt to resolve the Complaints and, if this cannot be achieved, he or she shall submit a recommendation to the City Council, which shall either (1) dismiss the complaint, or (2) specify corrective steps to be taken by Grantee. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

SECTION XXI - 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.

SECTION XXII - 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 Federal Communications Commission 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.

SECTION XXIII - PUBLICATION

The Grantee shall assume the cost of any required publication of this Ordinance.

SECTION XXIV - EFFECTIVE DATE AND ORDINANCE REPEALED

This Ordinance will not become effective until a statement is filed with the City Auditor signed by Midcontinent and the present franchise holder to the effect that Midcontinent has completed the purchase of the cable system. Upon the filing of the statement, all ordinances or parts of ordinances in conflict herewith are hereby repealed, including the Ordinance granting a cable television franchise to NoDaKable, Inc.

FIRST READING March 7, 1988

SECOND READING April 4, 1988

ADOPTED April 4, 1988

EFFECTIVE DATE May 20, 1988

Ken Rehling
Mayor

ATTEST Arlyn J. Price
City Auditor

(Seal)