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*Statutory reference: Generally, SDCL 9-35, carrier and utility franchises and regulations; SDCL 49-34, gas and electric utility service; SDCL 9-21-11, long-term contracts for utility services; SDCL 9-30-1, utility openings in streets and alleys; and, SDCL 9-35-4, adoption of franchise ordinance, publication and notice of election.

APPENDIX A - I

PIERRE CABLE TELEVISION

ORDINANCE NO. 1473

AN ORDINANCE GRANTING TO MIDCONTINENT COMMUNICATIONS THE NONEXCLUSIVE RIGHT TO ERECT, MAINTAIN AND OPERATE IN, UNDER, OVER, ALONG, ACROSS THE PRESENT AND FUTURE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, EASEMENTS DEDICATED FOR COMPATIBLE USES AND OTHER PUBLIC PLACES IN THE CITY OF PIERRE, SOUTH DAKOTA AND THE SUBSEQUENT ADDITIONS THERETO, TOWERS, POLES, LINES, CABLES, WIRES, AND OTHER APPARATUS FOR THE PURPOSE OF TRANSMISSION AND DISTRIBUTION OF AUDIO, VISUAL, ELECTRONIC AND ELECTRICAL SIGNALS, AND OTHER ELECTRONIC IMPULSES IN ORDER TO FURNISH TELEVISION AND RADIO PROGRAMS AND VARIOUS OTHER COMMUNICATION AND DATA SERVICES TO THE PUBLIC, FOR A PERIOD OF FIFTEEN (15) YEARS REGULATING THE SAME, AND PROVIDING COMPENSATION TO THE CITY.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PIERRE, SOUTH DAKOTA:

SECTION I. - TITLE

This Ordinance shall be known and may be cited as the “Pierre Cable Television Ordinance.”

SECTION II. – DEFINITIONS

For the purposes of this Ordinance, the following terms, 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 that includes the retransmission of local broadcast signals.
2. **“City”** is the City of Pierre, South Dakota.
3. **“Commission”** Is the City Commission of Pierre, South 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 programming, other programming services and other 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 for video programming, other programming services 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 Communications a South Dakota general partnership or anyone who succeeds Midcontinent Communications in accordance with the revisions 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

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 Pierre, South 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 data and communications services to the public for a period of fifteen (15) years, commencing from and after the effective date of this Ordinance. City agrees that any grant of similar rights to any other person or entity shall be on terms and conditions substantially the same as those set forth in this Ordinance.

SECTION IV - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Grantee shall, during the term hereof, except in those areas that have been preempted by the Cable Communications Policy Act of 1984, as amended, or The Telecommunications Act of 1996, as amended, or that 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 extend service beyond its existing system where it is not economically feasible to do so, except upon payment by the person requesting service of the capital costs incurred by the Grantee in bringing service to such site. Grantee shall evaluate each such request for service and file with the City a proposal, for its approval, for furnishing service and the terms for repayment of the cost of furnishing such service.

SECTION VI - LIABILITY AND INDEMNIFICATION

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

- (a) Worker's Compensation upon its employees and required of its contractors and subcontractors engaged in any manner in the installation or servicing of its plant and equipment within the City of Pierre, South Dakota.
- (b) Commercial general liability insurance to the extent of Five Hundred Thousand Dollars (\$500,000.00) 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. 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 Worker's Compensation law which may arise out of their erection, maintenance, use or removal of said attachments or poles within the City, or by any other 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 Worker'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.

The damages or penalties, referred to herein, 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

Grantee will construct, maintain, and operate a system with a minimum capacity of thirty-five (35) channels.

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. The Grantee shall maintain in Pierre, South Dakota, a force of one or more resident agents or employees at all times and shall have sufficient employees to provide safe, adequate, and prompt service (next business day) for its facilities. Prompt service shall include authorizing the local office staff to accept last minute payments and reconnection fees and the authority to promptly reconnect services during normal working hours and on weekends.
3. Grantee shall, except as is hereinafter stated, provide the City Commission, through the Finance Officer, with 30 days advance written notice of any change in channel assignment for a program service or of a change in the video programming service provided on any channel. Grantee shall not be required to give 30 days notice where the change is made for reasons beyond the control of Grantee but Grantee shall give such notice as is reasonable under the circumstances. Service of the notice shall be deemed to have been completed on the date the notice is mailed.

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 per building, 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 the locations identified on Exhibit A one junction terminal to said buildings and shall also furnish to the building, without charge, basic cable service to all television sets connected within such building to the terminal junction. The city reserves the right to change these locations from time to time as needs change, at no additional cost to the city.

In addition, Grantee shall, subject to the line extension provisions of Section V, provide to the City without charge at the locations identified on Exhibit B one junction terminal to such buildings. Grantee shall also act as an Internet Service Provider to furnish such buildings, without charge, Internet access

through the cable system and email addresses for all computers connected to the Internet within such buildings. The City's use of such services shall be subject to Grantee's Acceptable Use Policy, as in effect from time to time. A copy of Grantee's current Acceptable Use Policy is attached hereto as Exhibit C. Grantee shall insure that the equipment, wiring and lines located outside of such building and used to provide basic cable service shall be of sufficient quality to facilitate access to the Internet. The City shall assist with trenching, plowing or boring those service lines that are not within reasonable distance to the buildings listed.

The Grantee shall allocate one channel to the City as an educational or governmental access 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

Grantee shall, upon request of the Mayor or his designee, 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 Director or Engineer reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places in the City.
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 affecting electrical installation, which may be presently in effect, or changed by future ordinances. The City shall always deal with the Grantee and not their hired contractors during times of repair, maintenance and new construction, regardless of the size of the project. In addition, the City, at its discretion, may require a performance bond from the Grantee's hired contractors for projects when the cost of a project exceeds \$25,000.00.

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 a manner approved by the City Public Works Director 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 establishment of 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 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 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, cancelled or have expired, Grantee shall, subject to the rights of the City to acquire or transfer the system as specified in Section XVII, 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

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 anytime, to disclaim any further ownership rights to the interior wiring and specified equipment and fittings at a subscriber's residence or other building by giving written notice to 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, that Grantee shall have the right, as long as it is providing service to the premises, to use said interior wiring and specified equipment without charge. Upon termination of service to a subscriber, the Grantee shall, upon the subscriber's request and subject to FCC regulations, promptly remove all its above ground facilities and equipment that are external to the building from the premises of such subscriber.

SECTION XV - ASSIGNMENT OF ORDINANCE

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

SECTION XVI - PAYMENT TO THE CITY

During the term of the rights granted hereunder and as long as the Grantee operates said system, the Grantee shall pay as compensation to the City for the rights granted herein, a sum equal to five percent (5%) of the annual total gross subscriber revenues of the cable system. "Gross subscriber revenues" shall consist of those revenues received by the Grantee from the monthly service charges paid by subscribers receiving service under this agreement for basic cable service and premium pay services, such as HBO, Movie Channel, etc. In addition, gross subscriber revenues shall include revenues received by Grantee from monthly service charges paid by subscribers for Internet services to the extent

that applicable federal or state law, regulation or court decisions do not prohibit Grantee from providing such services through the cable system or otherwise prohibit the inclusion of such revenues in determining fees payable to the City hereunder. Gross subscriber revenues shall not include revenues received as installation charges, and fees for reconnections, inspections, repairs or modifications of any installation, all State and Federal Taxes and fees (including Franchise Fees) 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 another 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.

Grantee shall file with the City, within ten (10) days after the completion of the independent annual audit of Grantee's parent company, a statement showing the gross subscriber revenues as defined herein. It shall be the duty of Grantee to pay the City within fifteen (15) days after the time for filing such statement, the balance due, if any, for the operating year covered by such statement.

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, as amended, or The Telecommunications Act of 1996, 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 fifteen (15) year term has expired. If this Ordinance is not renewed or, 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.

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 Commission 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 Commission 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 Commission 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 Commission may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Commission determines provided 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 Finance Officer a schedule setting forth all rates and charges to be made to subscribers for all tiers of service, including installation charges. Notice of changes to such rates shall be provided to the City Commission, through the City Finance Officer, thirty (30) days prior to effective date of change.
2. During the term hereof, Grantee shall comply with the rate regulation rules of the Federal Communications Commission.
3. The monthly rate set forth in 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, The Telecommunications Act of 1996, as amended, 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 Commission 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 City Finance Officer for investigation. The complaining party and Grantee shall be afforded a reasonable opportunity to present written statements of their position. The City Finance Officer shall attempt to resolve the Complaints and, if this cannot be achieved, he or she shall submit a recommendation to the City Commission, which shall either (1) dismiss the complaint, or (2) specify corrective steps to be taken by Grantee. Appeal from the Commission'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 REPEAL

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

FIRST READING: 05/23/2000

SECOND READING: 06/6/2000

PUBLISHED: 06/9/2000

EFFECTIVE DATE: 6/29/2000

Mayor
City of Pierre, SD

ATTEST:

City Finance Officer

(SEAL)

**EXHIBIT A
CABLE FRANCHISE
MAY 2000**

The six (6) buildings listed will receive Cable Service:

- (1) City Hall at 222 East Dakota
- (2) Police Department at the Solem Safety Building at East Hwy 34
- (3) Fire Station # 1 at 215 West Dakota
- (4) Fire Station # 2 at 1415 East Erskine Street
- (5) Fire Station # 3 at 715 North Poplar Street
- (6) Fire Station # 4 at North Pierce

The city reserves the right to change these locations from time to time as needs change, at no additional cost to the city.

**END
EXHIBIT A**

**EXHIBIT B
CABLE FRANCHISE
MAY 2000**

The thirteen (13) buildings that will receive Internet service are:

- (1) City Hall, 222 East Dakota
- (2) Recreation Office, 715 East Dakota
- (3) Electric Shop, 1614 East Dakota
- (4) Street and Water Shop, 1700 East Dakota
- (5) Landfill Scale, 2800 East Park
- (6) Sewerage Treatment Plant, 1100 South Buchanan
- (7) Park Shop, 1201 East Missouri
- (8) Fire Station #1, 215 West Dakota
- (9) Fire Station # 2, 1415 East Dakota
- (10) Fire Station # 3, 721 North Poplar
- (11) Fire Station # 4, 802 North Pierce
- (12) Solem Building, 3200 East Hwy 34
- (13) Hughes County Court House and Jail, 104 East Capitol

**END
EXHIBIT B**

EXHIBIT C

ACCEPTABLE USE POLICY

This Acceptable Use Policy specifies the actions prohibited by Midcontinent Communications (Midcontinent) to users of the Midcontinent Network. Midcontinent reserves the right to modify the Policy at any time, effective upon posting of the modified Policy.

Any user found in violation of the policy may be subject to disciplinary action up to and including the following:

- Expulsion from Midcontinent network.
- Termination of Midcontinent network services.
- Forfeiture of all fees paid to date
- Liability of any legal fees and labor costs incurred by Midcontinent due to the Policy violation.

ILLEGAL USE

The Midcontinent network may be used for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law of regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws. Midcontinent will cooperate with law enforcement if illegal activity is suspected.

SYSTEM AND NETWORK SECURITY

Violations of system or network security are prohibited, and may result in criminal and civil liability. Midcontinent will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network violation include, without limitation, the following:

- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan, or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
- Interference with service to any user, host or network including, without limitation, mail-bombing, flooding, deliberate attempts to overload a system and broadcast attacks.
- Forging of any ICP/IP packet header or any part of the header information in an email or newsgroup posting.

EMAIL

Sending unsolicited mail messages, including, without limitation, commercial advertising and information announcements, is explicitly prohibited. A user shall not use another site's mail server to relay mail without the express permission of the site. Sending unsolicited mail messages from another site in behalf of a site or mail ID on a Midcontinent network is explicitly prohibited.

USENET

Posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple posting, also known as "SPAM") is explicitly prohibited.

INDIRECT OR ATTEMPTED VIOLATION OF THE POLICY, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A MIDCONTINENT CUSTOMER OR A CUSTOMER'S END USER, SHALL BE CONSIDERED VIOLATIONS OF THE POLICY BY SUCH CUSTOMER OR END USER.

Midcontinent does not accept responsibility for content of materials accessible through the Midcontinent network or damages caused by accessing such material. While Midcontinent does not censor or edit network traffic or content, Midcontinent reserves the right to determine whether any user is in violation of this Policy at any time.

Complaints regarding Illegal Use or System or Network Security issues should be sent to security@midco.net.

Complaints regarding email abuse, USENET abuse or SPAM should be sent to abuse@midco.net.

All other questions regarding this policy should be addressed to support@midco.net.

APPENDIX A - II

NATURAL GAS INTER-ENERGY CORPORATION

ORDINANCE NO. 1238

AN ORDINANCE GRANTING TO INTERENERGY CORPORATION, ITS SUCCESSORS

AND ASSIGNS, THE RIGHT TO OCCUPY ANY OF THE STREETS, ALLEYS OR PUBLIC PLACES OF THE CITY OF PIERRE, SOUTH DAKOTA, FOR THE PURPOSE OF TRANSMITTING OR DISTRIBUTING NATURAL GAS.

BE IT ORDAINED BY THE CITY OF PIERRE, SOUTH DAKOTA:

Section 1. The right is hereby granted to Interenergy Corporation (the "Company"), its successors, and assigns, to occupy any of the streets, alleys or public places of the City of Pierre, South Dakota, for the purpose of transmitting or distributing natural gas for a period of twenty (20) years from the effective date hereof as provided in Section 2, hereof, provided, however, that the right herein granted shall be non-exclusive and shall be subject to termination at the option of the City of Pierre as hereinafter provided and shall be subject to the reasonable and lawful control and regulations by the governing board of said city.

Section 2. The right granted herein shall become effective as of May 5, 1989.

Section 3. That Company shall upon demand, pay to the City of Pierre, South Dakota, the cost of publishing this ordinance.

Section 4. The natural gas to be supplied hereunder shall contain a monthly average gross heating value of not less than 900 B.T.U. per cubic foot when tested at 60 degrees Fahrenheit, saturated with water vapor and under a pressure of 30 inches of mercury.

Section 5. The governing body of said city of Pierre shall have the option of cancelling and terminating this ordinance and declaring the same void if the the grantee does not within five (5) years after the effective date in Section 2 above have installed and in operation a natural gas transmission and distribution system making natural gas available generally to the residents of said city and has filed its certificate so stating with the governing body of said city.

Section 6. The grantee shall save the municipality harmless from any and all liability for damages caused by the grantee resulting from the construction, operation or maintenance of its gas system. The grantee will provide the City of Pierre with a bond to insure the repair of any street excavations and/or any other damage which may incur during construction. The amount of said bond shall be fixed by the Pierre City Commission previous to the start of any construction.

Section 7. Should it become necessary for the grantee, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved streets, roads or alleys, or any other public or private improvement, the grantee shall repair in a workmanlike manner such sidewalk, graveled or paved street, road, alley or other improvement after the installation of its pipes or other structures. The grantee shall use due care not to interfere with or damage any water mains, sewers, underground utilities, or other structures now in or which may hereafter be placed in said streets, alleys or other public places.

If at any time it shall be necessary to change the positions of any gas main or service connection of the grantee to permit the City to lay, make or change street grades, pavements, sewers, water mains or other City works in public streets, such changes shall be made by the Company at its own expense.

Section 8. The grantee shall have the right to augment its natural gas supply by the introduction and mixing of propane-air with the natural gas during peak use period, should the demand so require.

Section 9. The Company shall furnish gas at the rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, filed with or fixed by the Board of City Commissioners of the City of Pierre, South Dakota, or other competent authority having jurisdiction in the premises.

Section 10. The Company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any corporation or person, or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

Section 11. The right is hereby reserved to the city to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of South Dakota, or with orders of other authorities having jurisdiction in the premises.

Section 12. The City of Pierre does hereby warrant and undertake that for the term that this right remains in effect pursuant to the conditions hereof that the City of Pierre shall not in any way attempt to compete with Company, or its successors and assigns.

Section 13. This ordinance shall not be effective unless and until said Company shall file its unconditional acceptance of this ordinance with the City finance officer of said City.

First Reading: 4-4-89
Second Reading
and Adoption: 4-11-89
Published: 4-14-89

ATTEST:

Kenneth L. Hericks, Finance Officer

Gary L. Drewes, Mayor

(SEAL)

TELEPHONE AND TELEGRAPH SYSTEMS
NORTHWESTERN BELL TELEPHONE COMPANY

ORDINANCE NO. 835

AN ORDINANCE GRANTING TO NORTHWESTERN BELL TELEPHONE COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES OF THE CITY OF PIERRE, SOUTH DAKOTA, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING A GENERAL TELEPHONE AND TELEGRAPH SYSTEM WITHIN SAID CITY, AND PROVIDING FOR AN ELECTION FOR THE APPROVAL THEREOF.

BE IT ORDAINED BY THE CITY OF PIERRE, SOUTH DAKOTA:

Section 1. That Northwestern Bell Telephone Company, a corporation, its successors and assigns, are hereby granted the right to use and occupy the streets, alleys and other public places of the City of Pierre, South Dakota, for a term of twenty (20) years from the effective date hereof, for the purpose of constructing, maintaining and operating a general telephone and telegraph system 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. That Northwestern Bell Telephone Company shall, upon demand, pay to the City of Pierre, South Dakota, the cost of publishing this ordinance and of holding the election hereinafter referred to.

Section 4. That this ordinance shall be in full force and effect and shall constitute a binding contract between the City of Pierre, and Northwestern Bell Telephone Company when the same shall have been approved by a majority of the electors of said City voting thereon at the election provided for herein, and when the provisions hereof shall have been accepted in writing by Northwestern Bell Telephone Company and such acceptance filed with the City Auditor.

Section 5. That the proposition of granting a franchise to Northwestern Bell Telephone Company, in accordance with the terms of this ordinance, shall be submitted to a vote of the electors of this City at a special election, to be held not sooner than thirty (30) days after the publication of this ordinance, which special election shall be called for that purpose by a resolution of this City Council adopted after the publication of this ordinance.

Approved: Clint Gregory, Mayor

Attest: J.W. Ihli, City Auditor

First Reading: December 15, 1970

Second Reading and Adoption: December 22, 1970

APPENDIX A - IV

NATURAL GAS TRANSMISSION OR DISTRIBUTION

NORTHWESTERN PUBLIC SERVICE COMPANY

ORDINANCE NO. 840

AN ORDINANCE GRANTING TO NORTHWESTERN PUBLIC SERVICE COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO OCCUPY ANY OF THE STREETS, ALLEYS OR PUBLIC PLACES OF THE CITY OF PIERRE, SOUTH DAKOTA, FOR THE PURPOSE OF TRANSMITTING OR DISTRIBUTING NATURAL GAS, AND PROVIDING FOR AN ELECTION THEREON.

BE IT ORDAINED BY THE CITY OF PIERRE, SOUTH DAKOTA:

Section 1. The right is hereby granted to Northwestern Public Service Company, its successors and assigns, to occupy any of the streets, alleys or public places of the City of Pierre, South Dakota, for the purpose of transmitting or distributing natural gas for a period of twenty (20) years from the first day of May, 1971, provided, however, that the right herein granted shall not be exclusive and shall be subject to the reasonable and lawful control and regulation by the governing board of said city.

Section 2. The proposition of whether or not said right shall be granted shall be submitted to a vote of the electors of this municipality at a special election called for that purpose not sooner than thirty days after the publication of this ordinance.

Section 3. That Northwestern Public Service Company shall upon demand, pay to the City of Pierre, South Dakota, the cost of publishing this ordinance and of holding the election hereinafter referred to.

Section 4. The natural gas to be supplied hereunder shall contain a monthly average gross heating value of not less than 900 B.T.U. per cubic foot when tested at 60 degrees Fahrenheit, saturated with water vapor and under a pressure of 30 inches of mercury.

Section 5. The governing body of said city of Pierre shall have the option of cancelling and terminating this ordinance and declaring the same void if the grantee does not within five (5) years after the date of the election provided for in Section 2 above have installed and in operation a natural gas transmission and distribution system making natural gas available generally to the residents of said city and has filed its certificate so stating with the governing body of said city.

Section 6. The grantee shall save the municipality harmless from any and all liability for damages caused by the grantee resulting from the construction, operation or maintenance of its gas system.

Section 7. Should it become necessary for the grantee, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved streets, roads or alleys, or any other public or private improvement, the grantee shall repair in a workmanlike manner such sidewalk, graveled or paved street, road, alley, or other improvement after the installation of its pipes or other structures. The grantee shall use due care not to interfere with or damage any water mains, sewers, or other structures now in or which may hereafter be placed in said streets, alleys or other public places.

If at any time it shall be necessary to change the position of any gas main or service connection of the grantee to permit the City to lay, make or change street grades, pavements, sewers, water mains or other City works in public streets, such changes shall be made by the Company at its own expense.

Section 8. The grantee shall have the right to augment its natural gas supply by the introduction and mixing of propane-air with the natural gas during peak use period, should the demand so require.

Section 9. The Company shall furnish gas at the rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, filed with or fixed by the Board of City Commissioners of the City of Pierre, South Dakota or other competent authority having jurisdiction in the premises.

Section 10. The Company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any corporation or person, or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

Section 11. The right is hereby reserved to the City to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of South Dakota, or with orders of other authorities having jurisdiction in the premises.

Section 12. This ordinance shall not be effective unless the proposal to grant said right be approved at such election by a majority vote of the electors of this municipality voting thereon; and until said Company shall file its unconditional acceptance of this ordinance with the City auditor of said city.

First reading: February 2, 1971

Second Reading and Adoption: February 9, 1971.

Clint Gregory, Mayor

Published: February 12, 1971

Attest: J.W. Ihli, City Auditor

(SEAL)

APPENDIX A - V
TRANSMITTING OR DISTRIBUTING NATURAL GAS
SOUTH DAKOTA ENERGY COMPANY
ORDINANCE NO. 1293

AN ORDINANCE GRANTING TO SOUTH DAKOTA ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO OCCUPY ANY OF THE STREETS, ALLEYS OR PUBLIC PLACES OF THE CITY OF PIERRE, SOUTH DAKOTA, FOR THE PURPOSE OF TRANSMITTING OR DISTRIBUTING NATURAL GAS.

BE IT ORDAINED BY THE CITY OF PIERRE, SOUTH DAKOTA:

Section 1. The right is hereby granted to South Dakota Energy Company (the "Company"), its successors, and assigns, to occupy any of the streets, alley or public places of the City of Pierre, South Dakota, for the purpose of transmitting or distributing natural gas for a period of twenty (20) years from the effective date hereof as provided in Section 2, hereof, provided however, that the right granted herein shall be nonexclusive and shall be subject to the reasonable and lawful control and regulations by the governing boards of said City.

Section 2. The right granted herein shall become effective as of April 3, 1992.

Section 3. That Company shall upon demand, pay to the City of Pierre, South Dakota, the cost of publishing this ordinance.

Section 4. The natural gas to be supplied hereunder shall contain a monthly average gross heating value of not less that 900 BTU per cubic foot when tested at 60 degrees Fahrenheit, saturated with water vapor and under a pressure of 14.7 pounds per square inch absolute.

Section 5. The Company may construct a natural gas distribution facility within the City of Pierre for the purpose of facilitating the transmission or distribution of natural gas. The City of Pierre may lease said facility from the Company upon mutually agreeable terms and conditions. Such a leasehold agreement shall specify that the City of Pierre may lease the distribution facility from the Company at any time during the first five (5) years commencing from the date such distribution facility becomes operational. Such leasehold agreement shall also specify that the City of Pierre will have the option to purchase the distribution facility from the Company during the lease period upon mutually agreeable terms and conditions.

Section 6. The Company shall save the City of Pierre harmless from any and all liability for

damages caused by the Company resulting from the construction, operation or maintenance of its gas system. The Company will provide the City of Pierre with a bond to insure the repair of any street excavations and/or any other damage which may incur during construction. The amount of said bond shall be fixed by the Pierre City Commission previous to the start of any construction. The bond provided by the Company shall be released following completion of the construction of the distribution facility within the City of Pierre.

Section 7. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved streets, roads or alleys, or any other public or private improvement, the Company shall repair in a workmanlike manner such sidewalk, graveled or paved street, road, alley or other improvement after the installation of its pipes or other structures. The Company shall use due care not to interfere with or damage any water mains, sewers, underground utilities or other structures now in or which may hereafter be placed in said streets, alleys or other public places.

If at any time it shall be necessary to change the positions of any gas main or service connection of the Company to permit the City to lay, make or change streets grades, pavements, sewers, water mains or other City works in public streets, such changes shall be made by the Company at its own expense.

Section 8. The Company shall have the right to augment its natural gas supply by the introduction and mixing of propane-air with the natural gas during peak use period, should the demand so require.

Section 9. The Company shall furnish gas at the rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, filed with or fixed by the Board of City Commissioners of the City of Pierre, South Dakota, or other competent authority having jurisdiction in the premises.

Section 10. The Company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any corporation or person, or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

Section 11. The right is hereby reserved to the City of Pierre to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of South Dakota, or with orders of other authorities having jurisdiction in the premises.

Section 12. The City of Pierre does hereby warrant and undertake that for the term that this right remains in effect pursuant to the conditions hereof that the City of Pierre shall not in any way attempt to compete with company, or its successor and assigns.

Section 13. This ordinance shall not be effective unless and until said Company shall file its

unconditional acceptance of this ordinance with the City finance officer of said City.

First Reading: February 25, 1992
Second Reading and Adoption: March 10, 1992
Published: March 13., 1992

Gary L. Drewes, Mayor

ATTEST:

Kenneth L. Hericks, Finance Officer

APPENDIX A - VI
GAS DISTRIBUTION SYSTEM
MONTANA-DAKOTA UTILITIES COMPANY
ORDINANCE NO. 1710

AN ORDINANCE GRANTING TO MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF PIERRE

A GAS DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING NATURAL OR MANUFACTURED GAS, OR A MIXTURE OF BOTH, FOR PUBLIC AND PRIVATE USE.

BE IT ORDAINED BY THE PIERRE CITY COMMISSION

SECTION 1. For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and Montana-Dakota Utilities Co. is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.

SECTION II. There is hereby granted to Montana-Dakota Utilities Co, a Division of MDU Resources Group, Inc., a corporation, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the municipality as

now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use.

SECTION III. Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both for public and private use at such reasonable rates as may be approved by the Public Utilities Commission of the state wherein said municipality is located and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof.

SECTION IV. This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

SECTION V. The Municipality 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.

SECTION VI. Grantee shall indemnify and save and hold the Municipality 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 Municipality.

SECTION VII. Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations hereunder shall be binding upon its successors and assigns.

SECTION VIII. Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

SECTION IX. This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.

First Reading:	<u>09/25/2012</u>
Second Reading and Adoption:	<u>10/09/2012</u>
Publication:	<u>10/19/2012</u>

Laurie R. Gill, Mayor

ATTEST:

Twila Hight, Finance Officer

ORDINANCE NO. 1335

AN ORDINANCE PROVIDING FOR THE REGULATION OF BASIC SERVICE TIER RATES AND RELATED EQUIPMENT, INSTALLATION AND SERVICE CHARGES OF ANY CABLE TELEVISION SYSTEM OPERATING IN THE CITY OF PIERRE AND PROVIDING FOR PUBLIC HEARINGS THEREON.

WHEREAS, on October 5, 1992, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992 which, among other things provided that the basic service tier rates, and the charges for related equipment, installation and services of a cable television system (hereinafter "Basic Service Rates and Charges") shall be subject to regulation by a franchising authority in accordance with regulations prescribed by the Federal Communications Commission (hereinafter the "FCC"); and

WHEREAS, on April 1, 1993, the FCC prescribed such regulations in the Report and Order, In the Matter of Implementation of Sections of Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket 92-266, FCC 93-177 (released May 3, 1993) (hereinafter the "FCC Rate Regulations"); and

WHEREAS, the City of Pierre, South Dakota (hereinafter, the "City") is a franchising authority with the legal authority to adopt and the personnel to administer, regulations with respect to the Basic Service Rates and Charges of any cable television system operating in the City, including, without limitation, the system currently being operated by Midcontinent Cable Co., aka Midcontinent Cable Systems Co., (hereinafter "the Company") pursuant to Ordinance No. 1157 known as the Pierre Community Antenna Television Service ordinance (hereinafter the "Franchise"); and

WHEREAS, the City desires to regulate the Basic Service Rates and Charges of the Company and any other cable television system operating in the City and shall do so in accordance with the FCC Rate Regulations, notwithstanding any different or inconsistent provisions of the Franchise;

BE IT ORDAINED BY THE CITY OF PIERRE, SOUTH DAKOTA

1. That the City will follow the FCC Rate Regulations in its regulation of the Basic Service Rates and Charges of the Company and any other cable television system operating in the City, notwithstanding any different or inconsistent provisions in the Franchise; and
2. In connection with such regulation, the City will ensure a reasonable opportunity for consideration of the views of interested parties, and will hold public hearings upon any request for increase in rates and charges after publication of notice thereof once each week for two (2) successive weeks in the official city newspaper.
3. The Mayor or his/her designee is authorized to execute on behalf of the City and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations in order to enable the City to regulate Basic Service Rates and Charges.

First Reading: 12/7/93
Second Reading and Adoption: 12/14/93
Publication: 12/17/93

Gary L. Drewes, Mayor

ATTEST:

Kenneth L. Hericks, Finance Officer

APPENDIX A - VII
CABLE COMMUNICATIONS REGULATORY ORDINANCE
MIDCONTINENT FRANCHISE AGREEMENT
ORDINANCE 1751

AN ORDINANCE AUTHORIZING THE GRANT OF CABLE COMMUNICATIONS FRANCHISES IN THE CITY OF PIERRE, SOUTH DAKOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE(S).

The City of Pierre hereby ordains:

SECTION 1. SHORT TITLE AND DEFINITIONS

- 1.) Short Title. This Ordinance shall be known and cited as the Cable Communications Regulatory Ordinance.
- 2.) 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 in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
 - a.) "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).
 - b.) "Cable Programming Service" means any Video Programming provided over a Cable System, regardless of service tier, including installation or rental of equipment used for the receipt of such Video Programming, other than:

Video Programming carried on the Basic Service Tier;

Video Programming offered on a pay-per-channel or pay-per-program basis; or

A combination of multiple channels of pay-per-channel or pay-per-program Video Programming offered on a multiplexed or time-shifted basis so long as the combined service:

Consists of commonly-identified Video Programming; and is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. §543(1)(2) and 47 C.F.R. 76.901(b) (1993).

- c.) "Cable Service" means the one-way transmission to Subscribers of Video Programming, or other programming service, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.
- d.) "Cable System" or "System" shall have the meaning ascribed to it in federal law.
- e.) "Council" means the Pierre, South Dakota City Council.
- f.) "Franchise" means an initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other MVPD facility.
- (g) "Franchise Area" means the area within the legal boundaries of the Grantor.
- (h) "Grantee" is the Person which is granted a Franchise in City pursuant to this Ordinance, its agents and employees, lawful successors, transferees or assignees.
- (i) "Grantor" is the City of Pierre.
- (j) "Gross Revenue" means any revenue paid by subscribers for basic cable service and premium pay services such as HBO, Showtime, etc.. The term "Gross Revenues" shall not include any other revenue billed or received by the Grantee including, but not limited to installation fees, franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- (k) "Multichannel Video Program Distributor" or "MVPD" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

- (l) “Open Video Services” or “OVS” means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
- (m) “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- (n) “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- (o) “Standard Installation” means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.
- (p) “Street” means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by Grantor.
- (q) “Subscriber” means any Person who lawfully receives Cable Service.
- (r) “Video Programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable System or MVPD facility or to provide Cable Service, Video Programming or other MVPD services, including OVS, in the Grantor without a Franchise authorizing the same, unless applicable federal or State law prohibits the Grantor’s enforcement of such a requirement.

Grant of Franchise. Any Franchise that is granted in City shall be subject to the terms and conditions contained herein.

Grant of Nonexclusive Authority.

A Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in Franchise Area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in Franchise Area of a Cable System.

A Franchise shall be nonexclusive, and Grantor reserves the right to grant a similar use of said Streets to any MVPD at any time, provided, however, that all Franchises shall contain the same terms and conditions as this Franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a Franchise or is granted a Franchise to operate by the Grantor, the terms and conditions of which do not comply with this Ordinance, other

Grantees shall have the right either (i) to opt in to the competitor's Franchise by providing ten (10) days prior written notice to the Grantor; or (ii) to petition the Grantor for modifications to its Franchise, in which case the Grantor shall work in good faith with the affected Grantee(s) to review and adopt modifications which the Grantee(s) deem necessary, review and approval by Grantor shall not be unreasonably denied.

Before granting an additional franchise, the Grantor shall give written notice to all Grantees of any new application, identifying the applicant for such additional Franchise and providing at least thirty (30) days prior notice of the date, time, and place at which the Grantor shall consider and/or determine whether such additional Franchise should be granted.

(d) Every Franchise shall apply to the entire service area of the Grantor, as it exists now or may later be configured.

(e) In the event Grantor grants one or more additional Franchises or one or more non-franchised MVPD's commence providing Cable Service in the Grantor, a Grantee shall have the right to terminate or reduce the term of this Franchise in its sole discretion.

(f) Neither City nor Grantee(s) may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any other ordinance and this Franchise, the Franchise shall control.

Franchise Term. A Franchise shall be in effect for a period of up to fifteen (15) years from the effective date of the agreement, unless renewed, revoked, or terminated sooner as herein provided.

Territorial Area Involved. A Franchise shall be granted for the corporate boundaries of Grantor, as it exists from time to time. In the event of annexation by Grantor, or as development occurs, any new territory shall become part of the area covered. Whenever the grantee shall receive a request for service from at least fifteen (15) residences within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its system to such subscribers at no cost to said subscribers for system extension, other than the usual connection fees for all subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the system.

(a) Subscriber Charges for Extensions of Service. No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to subscribers, or a density of less than fifteen (15) residences per 1,320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the grantee and subscribers in the 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 of feet of its trunk or distribution cable, and whose denominator equals fifteen (15) residences. Subscribers who request service hereunder, will bear the remainder of the construction and other costs on a pro rata basis. The grantee may require that the

payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

Written Notice. All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to any officer of Grantee or Grantor's Administrator of this Ordinance as specified in a Franchise.

SECTION 3. APPLICATION FOR NEW FRANCHISE

1.) An application for an initial Franchise to provide Video Programming shall be in writing on a form provided by the City which shall contain where applicable:

- (a.) Applicant name and business address of Applicant.
- (b.) A statement as to the proposed Franchise Area, and whether Applicant holds an existing authorization to access the Rights-of-Way in the City and a map of the areas where such authorization exists if for an area other than the entire City.
- (c.) Resume of prior history of Applicant, including the legal, technical, and financial expertise of Applicant in the Cable Service field.
- (d.) List of officers, directors, and managing employees of Applicant and resumes of each.
- (e.) A proposed construction and schedule to provide Cable Service or Video Programming to Subscribers.
- (f.) A certificate of insurance consistent with the requirements of this Ordinance.
- (g.) A description of the Cable System the Applicant intends to build, including its capacity, the types of equipment proposed for use and the Cable Services or Video Programming which will be offered.
- (h.) A description of the financial qualifications of the Applicant to construct and operate the System including a balance sheet, income statement sources and uses of funds statement and pro forma projections for at least three (3) years of operation subsequent to System completion.
- (i.) A proposed plan for Public, Educational, and Government Access Channels, including funding, facilities, and equipment and capacity on the System to be dedicated for educational and governmental use if applicable.

2.) The Initial Franchise Application may be evaluated according to the following criteria, and approved within one-hundred eighty (180) days after City deems the Application is complete. In the event Applicant is already authorized to occupy the Rights-of-Way, the time for review and approval will be ninety (90) days.

- (a.) The evidence of legal, technical and financial ability required in the Applicant's proposal will be

such as to assure the ability to complete the entire System within a reasonable time from the date the Franchise is granted. The City will also consider the Applicant's ability to operate the System and provide the necessary Cable Services or Video Programming in compliance with the terms of this Ordinance.

(b.) The City Administrator or designee shall prepare a report and make his or her recommendations respecting such application to the City Council

(c.) A public hearing shall be set prior to any grant of a Franchise, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions.

(d.) The City may consider any additional information that it deems applicable.

SECTION 4 CONSTRUCTION AND OPERATIONS STANDARDS

1.) Conditions on Street Use.

A Grantee shall obtain all required permits from Grantor before commencing any construction upgrade or extension of the System.

The Grantor shall impose permit fees upon a Grantee for pavement cuts and will notify and make available to Grantee open trenches at no charge.

If at any time during the period of this Franchise Grantor shall elect to alter, or change the grade or location of any Street, alley or other public way, a Grantee shall, at its own expense, upon reasonable notice by Grantor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If Grantor reimburses other occupants of the Street, a Grantee shall be likewise reimbursed.

A Grantee shall, on request of any Person holding a moving permit issued by Grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and a Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

A Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

Nothing contained in this Ordinance shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

In areas where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

- (h) A Grantee shall at all times construct and operate its System in accordance with applicable FCC Technical specifications.
- (i) 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 the system as specified in Section 3.1.(j) herein, 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.
- (j) 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.
- (k) 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.
- (l) 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.
- (m) 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.
- (n) 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.
- (o) 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 cable service, including installation charges.
- (p) 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.

SECTION 5. SYSTEM PROVISIONS AND PUBLIC SERVICES

- 1.) Operation and Maintenance of System. A Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

- 2.) Service to Schools and City. A Grantee shall, subject to the line extension requirements of Section 2.5 herein, provide one (1) Drop and one (1) outlet of Basic Cable Service at no cost to those Franchise Authority offices, fire station(s), police stations(s), and public school building(s) that are passed by its System and listed in Appendix A. The outlets of Basic Service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but limited to, those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said building or premises exceeds 150 cable feet or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. If additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials.

- 3.) PEG Channel and Support.
 - a. Grantee shall dedicate two (2) channels for non-commercial, non-competitive public, educational and governmental ("PEG") programming. Every Subscriber receiving Cable Service over a Grantee's System shall receive the PEG channel at no additional charge. Additionally, Grantee will make a high definition channel available on a separate tier. The PEG channel shall be provided as part of Basic Cable Service and shall not be moved without the City's written approval which shall not be unreasonably withheld.

 - b. The City shall have sole responsibility for managing and controlling the PEG channel. The City shall establish rules for the programming, operation or administration of the PEG channel, which shall be subject to Grantee's review and approval. Grantee shall have no responsibility whatsoever for the programming, operation or administration of the PEG channel.)

- (4) Emergency Use. In the case of any emergency or disaster, a Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use. A Grantee shall comply with the mergandy alert requirements of federal law.

- 5.) Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

SECTION 6. OPERATION AND ADMINISTRATION PROVISIONS

Indemnification of Grantor.

A Grantee shall indemnify, defend, and hold harmless Grantor, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted

pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

In order for Grantor to assert its rights to be indemnified, defended, and held harmless, Grantor must with respect to each claim:

Promptly notify a Grantee in writing of any claim or legal proceeding which gives rise to such right;

Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

Insurance. A Grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of Grantor in its capacity as such. The policies of insurance shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000) for personal injury or death of any one Person, and One Million Dollars (\$1,000,000) for personal injury or death of two or more Persons in any one occurrence, Three Hundred Thousand Dollars (\$300,000) for property damage to any one Person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.

Franchise Fee.

- (a) A Grantee will pay Grantor a monthly franchise fee in the amount of five (5%) percent of Grantee's Gross Revenues.
- (b) The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.
- (c) 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.

SECTION 7. REVOCATION, ABANDONMENT, AND SALE OR TRANSFER

Grantor's Right to Revoke. Grantor reserves the right to revoke, terminate or cancel a Franchise, if after strictly following the procedures required by Section 7.2 herein, it is determined that a Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation.

Procedures for Revocation.

Grantor shall provide a Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, Grantor shall provide Grantee with written findings of fact which are the basis of the revocation.

Grantee shall be provided the right to a public hearing affording due process before the Grantor Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. Grantor shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

After the public hearing and upon written determination by Grantor to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.

During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.

Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.

Sale or Transfer of Franchise. No sale or transfer of a Franchise shall take place without the written approval of the Grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assign of a Grantee. Said approval shall not be required where a Grantee grants a security interest in its Franchise and assets to secure indebtedness.

SECTION 8. MISCELLANEOUS PROVISIONS

- 1.) Franchise Renewal. Any renewal of a Franchise shall be done in accordance with applicable federal law.
- 2.) Amendment of Franchise. A Grantee and Grantor may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time.
- 3.) Marketing. A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.
- 4.) Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and the remainder shall remain in full force and effect.

SECTION 9. PUBLICATION, EFFECTIVE DATE

Publication; Effective Date. If applicable, this Ordinance shall be published in accordance with law. The effective date of this Ordinance shall be _____.

Passed and adopted this ____ day of _____, 2015.

Acceptance.

Grantee shall accept this Franchise by executing same. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not been previously delivered.

Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

Passed and adopted this ____ day of _____, 2015.

CITY OF PIERRE

By: _____
Its: _____

MIDCONTINENT COMMUNICATIONS

By: _____
Its: _____

*Midcontinent Communications Investor, LLC
Managing Partner of Midcontinent Communications*

Date: _____

Exhibit A
Cable Video Franchise
October 2015

The following buildings will receive one outlet for one basic cable video service:

- City Hall
- Police Department
- Fire Station 1
- Fire Station 2
- Fire Station 3
- Fire Station 4