

CHAPTER XV.

FRANCHISES

ARTICLE 1.

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 STREET, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF BELFIELD, STARK COUNTY, NORTH, DAKOTA.

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

Be it ordained by the City Council of the City of Belfield, North Dakota.

15.0101 TERMS: 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.

15.0102 GRANT OF FRANCHISE TO GRANTEE: There is hereby granted to Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation, Grantee, 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, and an electric distribution system for transmitting and distributing electric energy for public and private use.

15.0103 SERVICE TO BE PROVIDED BY GRANTEE: Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both, and an electric distribution system for transmitting and distributing electric energy for public and private use at such reasonable rates as may be approved by the Public Service 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.

15.0104 NONEXCLUSIVE FRANCHISE: 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.

15.0105 REGULATION OF STREETS: 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.

15.0106 LIABILITY FOR DAMAGES: 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.

15.0107 ASSIGNMENTS: Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.

15.0108 NOTIFICATION OF ACCEPTANCE: 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.

15.0109 TERM OF FRANCHISE: 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.

## ARTICLE 2.

### GRANT OF FRANCHISE TO U.S. WEST

15.0201 GRANT OF FRANCHISE: The U.S. WEST Communication, Inc., its successors and assigns, are hereby granted the right to use and occupy the streets, alleys and other public places of the City of Belfield, North Dakota, for a term of ten (10) years from the effective date hereof, for the purpose of constructing, maintaining and operating a general telephone system within said city.

15.0202 GRANT SUBJECT TO POLICE POWERS: 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.

15.0203 CONTRACT: That this ordinance shall be in full force and effect, and shall constitute a binding contract between the City of Belfield and U S WEST Communications, Inc., when it shall have been enacted according to law, and when the provisions hereof shall have been accepted in writing by said U S WEST Communications, Inc. and such acceptance filed with the City Auditor.

15.0204 USE OF STREETS: During the construction, maintenance or enlargement of any part of said telecommunications system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The City reserves the right to make and adopt, and the rights and privileges hereby

granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its won or agents to anything to prevent or interfere with the carrying of its business in accordance with the franchise hereby granted

15.0205 RESTORATION OF STREETS AND SIDEWALKS: In case of disturbance of any street, sidewalk, alleys public ways, 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.

15.0206 REQUIREMENT TO RELOCATE: Grantee shall relocate any part of its telecommunications system, at the City's request and at Grantee's expense.

### ARTICLE 3.

#### COMMUNITY ANTENNA AND CLOSED CIRCUIT ELECTRONIC SYSTEM FRANCHISE

15.0301 DEFINITION: For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

City Council. The City Council of Belfield, North Dakota.

Company. Any grantee of rights under the terms of this Chapter.

15.0302 GRANT OF AUTHORITY--GENERALLY: Authority is hereby made available by the City to any person, who qualifies under all of the provisions of this Chapter, to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a system for the transmission of television, FM radio and electrical impulses and signals for all public and private uses.

15.0303 SAME--EXCLUSIVENESS: The right to use and occupy such streets, alleys, public ways and laces for the purposes herein set forth shall not be exclusive and the City reserves the right to grant a similar use of such streets, alleys, public ways and places to any other person or persons at any time during the period of any franchise granted pursuant to this Chapter.

15.0304 SUBJECTION OF FRANCHISED COMPANY TO POLICE POWER OF CITY: Any company shall at all times during the life of its franchise be subject to all lawful exercise of the police power by the City and to such reasonable regulations as the City shall

hereafter by resolution or ordinance, provide.

15.0305 LIABILITY INSURANCE REQUIRED: Any company obtaining a franchise under the provisions of this Chapter shall indemnify and save the City and its agents and employees harmless from any and all claims for personal injuries or property damages and any other claims, costs including attorneys' fees, expense of investigation and litigation of claims and suits thereon which may arise from the installation, operation or maintenance of its system within the City. For this purpose each company shall carry and at all times maintain on file with the City Auditor and at all times keep in force a public liability policy of insurance insuring the company and the City against any and all such liability for not less than fifty thousand dollars property damage, one hundred thousand dollars for any one person for personal injury or death, and three hundred thousand dollars for any one accident resulting in personal injury or death. Such policy or policies of insurance or certificates thereof, by a company licensed to do business in the state, shall be filed with the City prior to the final approval of any franchise granted hereunder. Any company, upon receipt of due notice in writing from the City, shall defend at its own expense any action or proceeding against the City in which it is claimed that injury or damages arose from the company's activities in the operation of its community antenna system. The City shall notify the company's representatives within the City within thirty days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of the company.

15.0306 CONDITIONS UPON STREET OCCUPANCY:

(a) Use generally. All transmission and distribution structures, lines and equipment erected or constructed by the company within the City shall be so located as to cause minimum interference with any other 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 such streets, alleys or other public ways and places.

(b) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the company shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all such disturbed paving, sidewalk, driveway or surface of any street or alley disturbed by the company, in as good condition as before the work was commenced and shall maintain the restoration in an approved condition for a period of two years after date repair or restoration.

(c) Relocation. In the event that at any time during the period of a franchise the City all lawfully elect to alter or change the grade of any street, alley or other public way, the company, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other telephone and television fixtures at its own expense.

(d) Placement of fixtures. The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main; and all

such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line; and those placed in alleys shall be placed close to the line of the lot abutting on such alley and then in such a manner as not to interfere with the usual travel on such streets, alleys and public ways; provided, however, that the company will place all wires, cables, fixtures and other equipment underground when other telephone, telegraph or other electrical utilities services are so located in such area unless the company is specifically, by action of the City Council, permitted to do otherwise where extreme hardship would result or where an underground installation is not workable. It is the intention of this section to require that any company granted a franchise hereunder use a portion of other utility poles already erected for the development of the company's aboveground distribution system, and no company shall be permitted

to erect its own poles, except where existing utility poles are inadequate to handle the additional load and where the placing of such additional poles is specifically authorized by the City Council or its duly authorized representatives.

(e) Temporary removal of wire for building moving. The company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting such removal, and the company shall have the authority to require such payment in advance. The company shall be given at least forty-eight hours advance notice to arrange for such temporary wire changes.

(f) Tree trimming. The company shall have the authority to trim trees upon any overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires, cables, fixtures and equipment of the company; all such trimming shall be done under the supervision and direction of the City and the expense of the company.

15.0307 WARRANTING BY CITY OF AUTHORITY TO USE STREETS: It is understood that there may be within the City various streets, alleys and other public ways which the City does not have the unqualified right to authorize any company to use because of reservations in favor of the dedicators or because of other legal impediments. Therefore, in granting any franchise pursuant to this Chapter, the City does not warrant or represent as to any particular street or portion thereof that it has the right to authorize any company to install or maintain portions of its systems therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the company.

15.0308 APPROVAL OF TRANSFER OF SYSTEM: The company shall not transfer any right under any franchise except by operation of law to any person without prior approval of the City Council. No sale or transfer of franchise rights or interest shall be effective until the vendee, assignee or lessee has filed in the office of the City Auditor an instrument duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise by the transferee and agreeing to perform all the conditions thereof.

15.0309 ACCESS TO PLANS, ETC.; FILING OF RULES AND REGULATIONS;

INSPECTION OF RECORDS: The City shall have access at all reasonable hours to all of the company's plans, engineering drawings and statistical customer records relating to the property and operation of the company and to all other records required to be kept hereunder insofar as the same are concerned with the community antenna television system of the company.

Along with the other matters required to be filed by this Chapter, a complete copy of the company's rules and regulations, adopted by the company for the conduct of its business, shall be filed with the City Auditor and in the local office of the company.

The City shall be entitled to inspection of any records bearing on the number of subscribers for service with the company and to require reasonable documentation of such information by the company when the annual payment, provided in Section 2-16, is tendered.

15.0310 PROMULGATION OF RULES AND REGULATIONS BY COMPANY: The company shall have the authority to promulgate such rules, regulations and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under its franchise and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the visions of this Chapter or the laws of the state and may be subject to approval by the City Council and any other duly authorized public agency or board.

15.0311 PENALTY: Any violation by any company, its lessee or successor under any franchise granted pursuant hereto or the failure to promptly perform any of the provisions of such franchise shall be cause for the forfeiture of such franchise and all rights thereunder to the City after reasonable written notice to such company and continuation thereafter of such violation, failure or default.

15.0312 APPLICATION GENERALLY; FINAL APPROVAL OF APPLICATION:

(a) Any person wishing to apply for a franchise under this Chapter shall fill out its application and file the same in the office of the City Auditor for consideration by the City Council. Such application need not be in any particular form but shall include the following information:

- (1) The complete name and address of the applicant.
- (2) If a corporation, the amount of authorized and issued stock, the names and the addresses of all stockholders owning more than five percent of the stock of such corporation and the interest held by each.
- (3) If a corporation, the names and addresses of all officers and managing agents thereof insofar as the same are concerned in any respect with the community antenna television system of such corporation.
- (4) A complete financial statement of the assets and liabilities of the applicant insofar as such are concerned with the completion of the community antenna television project.

- (5) A statement of the number of channels of television service to be offered by the company and an explanation of the source and method of transmission of such signals. Each applicant shall be required to guarantee to offer no less than five separate channels of viewing throughout the period of the franchise with a minimum of duplication of programs.
- (6) Any other information which may from time to time be requested by the City Auditor or by the City Council.
- (7) Any other information that the applicant may wish to submit bearing on its qualifications.
- (8) A complete schedule of all rates and charges to be effective allowing the issuance of the franchise.

(b) All applications received shall be considered by the City Council, which shall be authorized to accept any number that it deems advisable. Such acceptance shall be considered a preliminary approval and thereafter such successful applicant shall secure and submit, as required elsewhere in this Chapter, all insurance policies, surety bonds, its extension policy and everything else required for the issuance of a franchise. The City Council shall then reconsider all information available to it including the original application and all other matters submitted pursuant to this Chapter and shall then, in its discretion, determine whether or not to grant final approval to any application. The final approval shall be indicated by the passage of a special ordinance granting the franchise to the successful applicant, subject to all of the terms and conditions of this ordinance.

15.0313 APPLICATION FEE. Every applicant for a franchise shall be required to pay a franchise fee of one hundred dollars, which shall be submitted at the time of the initial application. In the event that the franchise is refused by the City Council, the fee shall be refunded in full.

15.0314 BONDS AND COMMITMENTS.

(a) Before any franchise shall be finally approved by the City Council, the company shall submit and file with the City auditor bonds and commitments in such form and amounts to be approved by the City Council at the time of or prior to the issuance of a franchise:

(b) Any bond or commitment required under this section is subject to approval by the City Council which approval may be revoked at any time for cause. Such bond, etc., shall at all times be filed in the office of the City Auditor. Any franchise granted hereunder shall be immediately revoked upon the noncompliance of any franchisee with any requirements of this section.

15.0315 SUBMISSION OF EXTENSION POLICY; EXTENSIONS MADE UNDER FRANCHISE: At the time that any application is submitted under the terms of this Chapter, the applicant shall submit therewith its extension policy which shall be considered in connection

with such application by the City Council. Such extension policy shall specify in detail the area of the City that be served following the initial installation of the company's system and shall further indicate the plans of the company to extend services to other areas of the City, indicating the times and the conditions precedent for such extensions. No precise form of an extension policy is specified herein but any applicant shall agree to furnish any information that may be requested from time to time by the City Council in clarification of the company's extension policy once a company is granted a franchise under this Chapter, following approval of its extension policy as submitted and filed, it shall not make or refuse to make any extension thereunder except as provided by such extension policy or as may otherwise be permitted by this Chapter or subsequent enactments of the commission. The extension policy, and any amendments thereto, which in turn must be first approved by the City Council before becoming effective, shall at all times be on file at the office of the City Auditor and be available to inspection by the public.

15.0316 PAYMENT TO CITY FOR PRIVILEGE; METHOD OF COMPUTATION OF PAYMENT TO CITY. The company shall pay to the City for the privilege of operating a system pursuant to any franchise granted under this Chapter a fee as shall be set by the City Council.

15.0317 TERM: Any franchise and rights granted thereunder shall take effect and be in full force from and after final approval thereof by the City Council, as specifically provided in Section 15.0312, and upon filing a written acceptance of such franchise by the company with the City Auditor, and such franchise shall continue in full force and effect for a term of ten years after such date; provided, however, that if a written acceptance is not filed within sixty (60) days after such final approval of the franchise by the City Council if the system authorized thereunder is not operational and capable of furnishing service to its subscribers within one (1) year after the time of such acceptance, unless such construction is prevented by strike, insurrection, an act of God or other cause beyond the control of the applicant, the provisions of such franchise shall then become automatically null and void, unless such delay in construction is reasonably explained to the City Council and the City Council in its sole discretion elects to grant an extension of time in which to complete such construction work. In the event that any system contemplated hereunder requires approval by the Federal Communications Commission or any other state or federal board or agency prior to the commencement of construction, the one year period allowed herein for construction to be completed shall not begin until after such federal or state approval is obtained although application therefor must be made no later than sixty days after the final approval of the franchise by the City Council.

15.0318 RIGHTS OF CITY IN FRANCHISE:

(a) Adoption of rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power and in the exercise of its power over any franchise that is granted; provided, that such regulations, by ordinance or otherwise, shall be reasonable and shall not be in conflict with the laws of the state.

(b) Use of system. The City shall have the right during the life of any franchise, free



of charge where aerial construction exists, of maintaining upon the poles of the company within the City, wire and pole fixtures necessary for a police and fire alarm system; such wires and fixtures shall be constructed and maintained to the satisfaction of the company and in accordance with its specifications. The City in its use and maintenance of such wires and fixtures shall at all times comply with the rules and regulations of the company so that there may be a minimum danger of contact or conflict between the wires and fixtures of the company and the wires and fixtures used by the City. The City shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of such wires and fixtures authorized by this section and shall save the company harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of such wires and fixtures to the poles of the company. In case of rearrangement of the company plant or removal of poles or fixtures, the City shall save the company harmless from any damage to persons or property arising out of the removal or construction of the wires or other fixtures belonging to the City.

(c) Supervision and inspection. The City shall have the right to supervise all construction or installation work performed subject to the provisions of this Chapter and to make such inspections as it shall find necessary to insure compliance with governing laws, ordinances and resolutions.

(d) Procedure after termination, etc., of franchise. Upon the revocation or termination of any franchise granted hereunder, the City shall have the right to determine whether the company may continue to operate and maintain its distributing system pending the decision of the City as to the future maintenance and operation of such system.

(e) Revocation of franchise. Should any company fail or refuse to reasonably comply with all of the provisions of this Chapter or any other rules, regulations, ordinances or resolutions enacted by the City or with any state law or rules or regulations promulgated pursuant to state law or laws, rules or regulations issued pursuant to the laws of the United States or any of its duly authorized agencies or boards, the City Council shall have the power and authority, upon reasonable notice to such company upon its failure thereafter to comply, to revoke or suspend, in the sole discretion of the City Council, any franchise granted hereunder.

15.0319 STANDARDS GENERALLY: Any company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are or may be set forth by the City Council, in this Chapter or otherwise, by the public service commission of the state, the Federal Communications Commission or any other duly authorized public commission or authority.

15.0320 NOTICE OF INTERRUPTION FOR REPAIRS: Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the company shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, the company shall give reasonable notice thereof to its customers.

15.0321 INTERFERENCE WITH RECEPTION OF NONUSERS: It shall be unlawful

for any company to interfere in any way with normal television reception by individuals not utilizing cable television.

15.0322 PREFERENTIAL OR DISCRIMINATORY PRACTICES: The company shall not, as to rates, charges, services, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage; provided, that nothing in this section shall be deemed to prohibit the establishment of a graduated scale or charges and classified rate schedules to which any customer coming within such classification would be entitled.

15.0323 RATES GENERALLY: Rates charged by any company for service shall be fair and reasonable and designed to meet all necessary costs of this service, including a fair rate of return on the net valuation of the properties devoted thereto under efficient and economical management. The company agrees that it shall be subject to all authority now or hereafter possessed by the City, or any other regulatory body having competent jurisdiction to fix just, reasonable and compensatory rates.

#### ARTICLE 4.

##### GRANT OF CABLE TELEVISION FRANCHISE

15.0401 TITLE: This Ordinance shall be known and may be cited as the "Belfield Community Antenna and Cable Television Ordinance."

15.0402 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 Belfield, North Dakota.
3. "Council" is the City Council of Belfield, 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 or any kind and any other legally recognized entity.
8. "Grantee" is each entity, and their respective successors and assigns, identified in Articles 5 and 6 and any subsequent articles as having an approved franchise granted by the City of Belfield in accordance with the provisions of this Ordinance.
9. "Subscribers" are those persons contracting to receive cable television reception

services furnished under this Ordinance by Grantee.

15.0403 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 Belfield, 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 twenty-five (25) 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.

15.0404 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.

15.0505 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.

15.0406 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 Belfield, 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 CATV System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

15.0407 GENERAL SYSTEM SPECIFICATIONS: The facilities used by the Grantee shall consist of a minimum of 12 active channels with 35-channel capacity (300MHz). 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.

15.0408 TECHNICAL STANDARDS: Grantee shall be governed by technical standards established by the FCC.

15.0409 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.

15.0410 SERVICE TO SCHOOLS AND CITY: The Grantee shall provide to public and parochial schools within the City, one terminal junction, for education purposes and at no cost to the City or the public or parochial school system, upon request.

Grantee shall also provide to the City without charge, in a location to be selected by the Council of Belfield, 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 notification 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.

15.0411 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.

15.0412 SAFETY REQUIREMENTS: The Grantee shall, at an 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.

15.0413 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 join 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 Superintendent or Engineer reasonably finds that the some restrict or obstruct the operation or location of any future streets or public places in the City of Belfield, 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 Belfield, North Dakota, affecting electrical installation, which may be presently in effect, or changed by future Ordinances.

3. In case of disturbance or 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 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 sum, 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 upon the overhanging 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 5trcet, alley or public place, any property of Grantee when required by the City by reason or traffic conditions, public safety, street vacation, freeway and street construction, change or establishments 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 or 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 providing of other above ground services in the designated areas.

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, canceled or have expired, Grantee shall, - subject to the rights of the City to acquire or transfer the system as specified in Section 15.0417, 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.

15.0414 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.

15.0415 TRANSFER OF ORDINANCE: The Grantee shall assign this Ordinance to another person without prior approval of the City Council, which approval shall not be unreasonably withheld.

15.0416 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 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 for basic cable service and premium pay services, such as HBO. Gross receipts shall not include revenues received as installation charges, and fees for re-connections, inspections, repairs or modifications of any installation, and all State and Federal Taxes relating thereto.

In no event shall any of such payments be payable until the system is actually in operation with paying subscribers, but there shall be no minimum number of subscribers hereunder. 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 annually on January 15 for the previous year's receipts. If the Grantee's audit is not completed by January 15, it shall make an estimated payment at that time and adjust it upon receipt of 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.

15.0417 DURATION AND RENEWAL OF ORDINANCE: The rights granted to Grantee herein shall, except as provided in this Section, terminate twenty-five (25) 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 twenty-five (25) 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.

15.0418 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 structure 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.

15.0419 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 basic CATV service, including installation charges.

2. Prior to December 29, 1986, before making any changes in the rates and charges to subscribers for basic CATV service, Grantee shall file in writing with the City Finance Officer 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 or takes no other action to delay such changes, said proposed rate changes shall become effective upon the expiration of the 30-day notice period.

3. If the Board sets the proposed rate change for hearing, said proposed rate changes will not become effective until the Council has taken action by means of a resolution or until the City's time for doing so has lapsed under federal law or FCC regulations.

4. This provision does not limit the right of Grantee to pass along to the subscribers state and local sales tax, programming cost increases or any specific copyright fees.

5. This Article is not applicable to rates for premium or pay service.

6. Following December 29, 1986, the City may regulate rates only if the cable television system in the City is defined by Federal Communications Commission regulations as one not subject to effective competition 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 Finance Officer 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 Board 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 Board shall take final action on the proposed increase within thirty (30) days.

7. 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.

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

9. 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.

15.0420 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 City Council for investigation. The complaining party and Grantee shall be afforded a reasonable opportunity to present oral or written statements of their position. The City Council shall then 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.

15.0421 MODIFICATION OF FCC RULES: Any modification or amendment of the rules of the Federal Communications Commission shall, to the extent applicable, be considered part of this Ordinance as of the effective date of such amendment, and shall be incorporated herein by specific amendments within one (1) year from the effective date of the amendment or at the time of the Federal Communications Commission's amendment or at the time of renewal of this Ordinance, whichever occurs first.

15.0422 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.

15.0423 UNAUTHORIZED CABLE USE: It shall be unlawful for any person or person



to obtain any cable television reception service from Grantee, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment or Grantee, unless the same is done with the prior permission of the Grantee. Any person or persons found guilty of violation of any of the provisions of this Section may be fined not more than One Hundred Dollars (\$100.00) or by imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment.

15.0424 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.

15.0425 PUBLICATION: The Grantee shall assume the cost of any required publication or this Ordinance and such cost is payable upon Grantee's filing of acceptance of this Ordinance.

15.0426 ACCEPTANCE OF ASSIGNMENT: The City Council of Belfield, North Dakota, ordains that the assignment and transfer of the cable television system in Ordinance No. 133 adopted in April, 1986 from Midcontinent Development Co., to Midcontinent Cable Systems Co. of North Dakota, P.O. Box 910, Aberdeen, South Dakota 57402-0910, is hereby approved effective upon the date of filing with the Auditor of a statement by the two companies that he transfer of the system has been completed. By accepting this transfer, Midcontinent Cable Systems Co. of North Dakota does not waive any rights granted to cable television system owners or operators by the Cable Communications Policy Act of 1984.

### **ORDINANCE NO. 303**

**AN ORDINANCE, AMENDING AND RE-ENACTING, CHAPTER FIFTEEN ORDINANCES, ARTICLE 4 OF THE CITY CODE OF THE CITY OF BELFIELD, NORTH DAKOTA.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELFIELD, NORTH DAKOTA, PURSUANT TO THE HOME RULE CHARTER OF THE CITY OF BELFIELD, AS FOLLOWS:**

**AN ORDINANCE AMENDING THE CABLE COMMUNICATIONS FRANCHISE ORDINANCE.**

WHEREAS, MIDCONTINENT COMMUNICATIONS (“Company”) holds a cable communications franchise (“Franchise”) for the construction and operation of a cable communications system within the City of Belfield (“Grantor”); and

WHEREAS, Grantor and Company have mutually agree to extend the term of the Franchise by adopting this Ordinance Amendment (“Amendment”) and to make such other changes as are mutually agreed upon herein.

NOW, THEREFORE, the City of Belfield hereby ordains:

1. The term of the Franchise is hereby amended to expire ninety (90) days after the current expiration date, unless Grantor and Company have executed and adopted a new cable communications franchise prior to that date, in which case the Franchise shall expire and terminate concurrently with the effective date of said new franchise.

2. Except as expressly modified herein, all other terms and conditions of the Franchise shall remain in full force and effect. Neither party waives any rights it may have pursuant to applicable law.

3. This Amendment shall be effective upon its passage and publication in accordance with applicable law.

#### Article 5. Grant of franchise to Consolidated Telecom.

15.0501. That Consolidated Telcom, a cooperative, its subsidiaries, successors and assigns, is hereby granted the right to use and occupy the streets, alleys and other public places of the City of Belfield, North Dakota, for a term of twenty (20) years from the date hereof, for the purpose of constructing, maintaining and operating a telecommunications system, which includes voice, video and data services of any kind or type, within said City.

15.0502. 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.

15.0503. The City reserves the right, if not prohibited by law, to make a charge of the Grantee for this franchise, which charge shall be subject to change by the Belfield City Council at its first meeting in January in every year of the franchise period. Prior to imposition of any franchise charge or fee, or change to an existing franchise charge or fee, the City shall provide the Grantee thirty (30) days' written notice of its intent to impose or charge said fee, and shall hold a public hearing thereon.

15.0504. When Consolidated Telcom begins providing video services in the franchise area it shall pay the City of Belfield a franchise fee of 3% of the Annual Gross Revenues from receipts from subscribers within the City of Belfield. This fee shall be subject to change as set forth above. Annual Gross Revenues shall mean all gross revenues received by Consolidated Telcom from subscribers within the City of Belfield in connection with the receipt of video services but shall not include any taxes, regulatory or government imposed fees of any kind, or any revenue received by Consolidated Telcom for the delivery of other services, including without limitation, telephony, data transmission, Internet access, interactive services or other broadband information services. This franchise fee shall be paid on a monthly basis within thirty (30) days after the end of calendar month.

15.0505. That this ordinance shall be in full force and effect, and shall constitute a binding contract between the City of Belfield, North Dakota, and Consolidated Telcom, when it shall have been enacted according to the law and when the provisions hereof shall have been accepted in writing by Consolidated Telcom, and such acceptance filed with the City Auditor.

(Ordinance 246).

**ARTICLE 6. AN ORDINANCE GRANTING TO MIDCONTINENT COMMUNICATIONS, ITS SUBSIDIARIES, SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF BELFIELD, NORTH DAKOTA, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING A TELECOMMUNICATIONS SYSTEM, WHICH INCLUDES VOICE, VIDEO AND DATA SERVICES OF ANY KIND OR TYPE WITHIN SAID CITY AND SUBJECT TO ALL TERMS AND CONDITIONS OF CHAPTER 15, ARTICLE FOUR.**

Section 1. That Midcontinent Communications, its subsidiaries, successors and assigns, is hereby granted the right to use and occupy the streets, alleys and other public places of the City of Belfield, North Dakota, for a term of twenty (20) years from the date hereof, for the purpose of constructing, maintaining and operating a telecommunications system, which includes voice, video and data services of any kind or type, within said City.

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

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

Section 4. That this ordinance shall be in full force and effect, and shall constitute a binding contract between the City of Belfield, North Dakota, and Midcontinent Communications, when it shall have been enacted according to the law and when the provisions hereof shall have been accepted in writing by Midcontinent Communications, and such acceptance filed with the City Auditor.

6-11-13 Last Updated  
Ordinance No. 299, 302 and 303  
Passed