

~CHAPTER 30~

CABLE COMMUNICATIONS

STATEMENT OF INTENT AND PURPOSE

The City intends, by the adoption of this Franchise, to bring about the development of a Cable Communications System, and the continued operation of it. Such a development can contribute significantly to the communication needs and desires of many. Further, the City may achieve better utilization and improvement of public services with the development and operation of a Cable Communication System.

Past studies by the City have led the way for organizing a means of procuring and securing of Cable communications System which, in the judgment of the Council, is best suited to the City. This has resulted in the preparation and adoption of this Franchise.

FINDINGS

In the review of the Renewal Proposal and application of Midcontinent Communications, G.P. ("Grantee"), and as a result of a public hearing, the City Council makes the following findings:

1. The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing, upgrading, and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by the City complies with the existing applicable state and federal laws and regulations; and
4. The Franchise granted to grantee is nonexclusive.

SECTION 1.

SHORT TITLE AND DEFINITIONS

1. **Short Title.** This Franchise Ordinance shall be known and cited as the Cable Communications Ordinance.
2. **Definitions.** For the purposes of this Franchise, 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** - 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) (1993).
 - b. **City** - The City of Hot Springs, a municipal corporation, in the State of South Dakota, acting by and through its City Council.
 - c. **City Council** - means the Hot Springs, South Dakota City Council.
 - d. **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:
 - 1) Video programming carried on the Basic Service Tier;
 - 2) Video programming offered on a pay-per-channel or pay-per-program basis; or
 - 3) 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:

- i. Consists of commonly-identified video programming; and
- ii. 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)(1993) AND 47 C.F.R. 76.901(b)(1993).

- e. **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.
- f. **Cable Communications System or System** - a system which operates the service of receiving and amplifying programs broadcast by one or more television or radio stations and other programs originated by a cable communications company or by another party, and distributing those programs by wire, cable, microwave or other means, whether the means are owned or leased, to persons who subscribe to the service.
- g. **Class IV Cable Communications Channel** - a signaling path provided by a Cable Communications System to transmit signals of any type from a Subscriber terminal to another point in the System.
- h. **Converter** - an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
- i. **Drop** - the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.
- j. **FCC** - means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- k. **Franchise** - means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546)
- l. **Grantee** - is Midcontinent Communications, G.P., its agents and employees,

lawful successors, transferees or assignees.

- m. **Gross Revenue** - all revenue received from Basic Cable Service, Cable Programming Service and Pay Television directly by the Grantee from the operation of its System within City. The term "Gross Revenues" shall not include installation fees, disconnection fees, upgrade and downgrade of service fees, fees for telecommunications services, if any, fees for the sales, leasing, or servicing of equipment, franchise fees, advertising revenues, 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.
- n. **Installation** - the connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.
- o. **Lockout Device** - an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communications System.
- p. **Pay Television** - 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.
- q. **Person** - is any person, firm, partnership, association, corporation, company, or other legal entity.
- r. **Standard Installation** - any residential installation which can be completed using a Drop of one hundred fifty (150) feet or less.
- s. **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 City.
- t. **Subscriber** - any Person who lawfully receives Cable Television Service.
- u. **Video Programming** - programming provided by, or generally considered

comparable to programming provided by, a television broadcast station.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. **Franchise Required.** It shall be unlawful for any Person to construct, operate or maintain a Cable Communications System in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Ordinance. It shall also be unlawful for any Person to provide Cable Television Service in City unless such Person shall have first obtained and shall currently hold a valid Franchise Ordinance. All Cable Communications Franchises granted by City shall contain the same substantive terms and conditions.
2. **Grant Franchise.** This Franchise is granted pursuant to the terms and conditions contained herein.
3. **Grant of Nonexclusive Authority.**
 - a. The Grantee shall have the right and privilege 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 City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in City of a Cable communications System as herein defined. The Cable Communications System constructed and maintained by Grantee or its agents shall not interfere with other uses of Streets.
 - b. This Franchise shall be nonexclusive, and City reserves the right to grant a similar use of said Streets, alleys, public ways and places, to any Person at any time during the period of this Franchise, provided, however, that any additional Cable Franchise grants shall be under the same substantive terms and conditions as this Franchise.
 - c. Grantee shall have the authority to use City easements, public rights-of-way, Streets and other conduits for the distribution of Grantee's System at no additional cost. The City shall require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions

for utilities to serve such subdivisions.

1. **Franchise Term** - This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless renewed, revoked or terminated sooner as herein provided.
2. **Previous Franchises** - Upon acceptance by Grantee as required by Section 12 herein, this Franchise shall supersede and replace any previous Ordinance or Agreement granting a Franchise to Grantee to own, operate and maintain a Cable communications System within City.
3. **Compliance with Applicable Laws, Resolutions and Ordinances** - The Grantee shall at all times during the life of this Franchise comply with applicable laws, resolutions and ordinances.
4. **Rules of Grantee** - The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of South Dakota, City, or any other body having lawful jurisdiction thereof.
5. **Territorial Area Involved** - This Franchise is granted for the corporate boundaries of City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of forty (40) homes per cable mile as measure from the last fiber node or terminating amplifier. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas.
6. **Written Notice** - All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail

postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City of Hot Springs
 City Hall
 303 North River
 Hot Springs, South Dakota 57747

If to Grantee: Midcontinent Communications, G.P.
 5001 West 41st Street
 Sioux Falls, South Dakota 57106
 Attn: Rod Carlson

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

Grantee shall provide installation of one (1) cable Drop, one (1) cable outlet, and monthly Basic Cable Service without charge to three (3) City-owned buildings as well as the public and parochial elementary and secondary schools within the city.

No redistribution of the free Basic Cable Service provided pursuant to this Section shall be allowed. Additional Drops and/or outlets in any of the above locations will be provided by Grantee at the cost of Grantee's time and material. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such installation meets Grantee's standards and provided that any fees for Cable Communications Services are paid. Nothing herein shall be construed as requiring Grantee to extend the System to serve additional institutions as may be designated by City. Grantee shall have one (1) year from the date of City Council designation of additional institution(s) to complete construction of the Drop and outlet.

SECTION 3.

CONSTRUCTION STANDARDS

1. Construction Codes and Permits.

a. Grantee shall obtain all required permits from City before commencing any construction upgrade or extension of the System, including the opening or

disturbance of any Street, or private or public property within City. Grantee shall substantially comply with all state and local laws and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.

- b. The City shall impose no permit fees upon Grantee given that Grantee pays Franchise Fees pursuant to this Franchise.
- c. The city shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

2. **Repair of Streets and Property.** Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as approved by City in the case of Streets and other public property, which approval shall not be unreasonably withheld. Grantee shall not be required to repair portions of Streets or public property not damaged or disturbed if repairing the disturbed or damaged portion returns the Street or public property to the same condition as prevailing prior to Grantee's work. If Grantee shall fail to promptly perform the restoration required herein, City shall have the right to put the Streets, public, or private property back into good condition. City reserves its rights to pursue reimbursement for such restoration from Grantee.

3. **Conditions on Street Use.**

- a. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

- b. All System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located so as not to obstruct or interfere with the proper use of Streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said Streets, alleys and other public ways and places, and not to interfere with existing public utility installations. Upon request, the Grantee shall furnish to and file with City Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.
- c. If at any time during the period of this Franchise City shall elect or alter, or change the grade or location of any Street, alley or other public way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of City. If City reimburses other occupants of the Street, Grantee shall be likewise reimbursed.
- d. The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Street shall be so placed as to comply with all requirements of City. Grantee may access poles owned by the City upon approval of the City Engineer. City may access poles owned by Grantee upon approval of Midcontinent Regional General Manager.
- e. The Grantee shall, on request of any Person holding a moving permit issued by City, 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 the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
- f. The Grantee shall have the authority to trim any trees upon and overhanging the

Streets, alleys, sidewalks, or public easements of City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

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

4. Undergrounding of Cable.

- a. In all areas of City where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe.
- b. In any area of City where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.
- c. Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.

- 5. **Erection, Removal and Joint Use Of Poles.** No poles, conduits, or other wire-holding structures shall be erected or installed by the Grantee without prior approval of City with regard to location, height, type and other pertinent aspects.

6. Safety Requirements.

- a. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- b. The Grantee shall install and maintain its System wires, cables, fixtures and other

equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state and local regulations, and in such manner that they will not interfere with any installations of City or of any public utility serving City.

- c. All System structures and all System lines, equipment and connections in, over, under and upon the Streets, sidewalks, alleys, and public ways and places of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.

SECTION 4.

DESIGN PROVISIONS

1. **System Design and Channel Capacity.** Grantee shall provide a Cable System which has a capacity of forty-seven (47) channels.
2. **Operation and Maintenance of System.** The Grantee shall render effective service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice in accordance with Section 2.9 herein and shall occur during periods of minimum use of the System.
3. **Technical Standards.** The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable communications systems pursuant to the Federal Communications Commission's rules and regulations and found in Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time.
4. **Special Testing.** City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or

unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by City.

5. **FCC Reports.** The City may request the results of tests required to be filed by Grantee with the FCC to City.
6. **Lockout Device.** Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.
7. **Emergency Override.** Grantee shall provide an emergency alert override system consistent with federal law.

SECTION 5.

SERVICES PROVISIONS

1. **Regulation of Service Rates.**
 - a. The City may regulate rates for the provision of cable service, equipment, or any other communications service provided over the System to the extent allowed under federal or state law(s). In exercising its jurisdiction to regulate any such rates, City will adhere to regulations adopted by the Federal Communications Commission at 47 C.F.R. § 76.900 et seq. as they may be amended from time to

time.

- b. In the event that City elects to exercise its jurisdiction over locally regulatable rates. It shall, after notice, hold a public hearing for the consideration of views of interested parties with respect to initial rates filed and any subsequent proposed changes in rates.

2. **Sales Procedures.** Grantee shall not exercise deceptive sales procedures when marketing its Cable Television Services within City. Grantee shall have the right to market its cable services door-to-door during reasonable hours consistent with local ordinances and regulation.

3. **Subscriber Inquiry and Complaint Procedures.**

- a. Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis.

- b. Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), City and Grantee shall prepare and maintain written records of all complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the regional office of Grantee.

4. **Refund Policy.** In the event a Subscriber established or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.

SECTION 6.

OPERATION AND ADMINISTRATION PROVISIONS

1. **Franchise Fee.**

- a. Grantee pays City an annual franchise fee in the amount of three percent (3%) of Grantee's annual Gross Revenues.

- b. The franchise fee shall be payable monthly together with a brief report showing the basis for the computation.
2. **Access to Records.** The City shall have the right to inspect, upon reasonable notice, at any time during normal business hours, those records maintained by Grantee which relate to System operations and to Gross Revenues, subject to the privacy provisions of 47 U.S.C. § 521 et seq.
3. **Reports Review by the City.** Grantee shall prepare, at the times and in the form prescribed, such reports with respect to the operations, affairs, transactions or property, as they relate to the System, which Grantee and City may agree upon.

SECTION 7.

GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. **Indemnification of City.**
 - a. City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System.
 - b. Grantee shall indemnify, defend, and hold harmless City, 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 the franchise, except claims because of EG programming or the City's operation, administration, promotion or management of the access channel(s), any use of Internet Services in public institutions, or any claims covered by Worker's Compensation.
 - c. Nothing in this Franchise 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, regrading, or changing the line of a

Street or public place or with the construction or reconstruction of a sewer or water system.

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

1. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
2. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
3. 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.

2. Insurance. As a part of the indemnification provided in Section 7.2, but without limiting the foregoing, Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of City in its capacity as such, its officers, elected officials, boards, commissions, agents and employees. The policy or policies shall name as additional insured City, and their capacity as such, their officers, agents and employees. 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.

The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of

Grantee or for other reasons, except after thirty (30) days' advance written notice have been provided to City.

SECTION 8.

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. **City's Right to Revoke.** In addition to all other rights which City has pursuant to law or equity, City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges thereto.
2. **Procedures for Revocation.**
 - a. City shall provide 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 correct the violation or to provide adequate assurance of performance in compliance with the Franchise. Together with the notice required herein, City shall provide Grantee with written findings of fact which are the basis of the revocation.
 - b. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
 - c. After the public hearing and upon written determination by City to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court agency.
 - d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.
 - e. Upon satisfactory correction by Grantee of the violation upon which said notice was given as determined in the City's sole discretion, the initial notice shall become void.

3. **Abandonment of Service.** Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City.
4. **Sale or Transfer of Franchise.**
 - a. No sale or transfer of this Franchise shall take place until the parties of the sale or transfer file a written request with City for its approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure indebtedness.
 - b. City shall approve or deny the transfer consistent with federal law. City shall not unreasonably withhold its approval.
 - c. In no event shall a transfer or assignment of this Franchise be approved without the transferee becoming signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

SECTION 9.

PROTECTION OF INDIVIDUAL RIGHTS

1. **Subscriber Privacy.** Grantee shall comply with laws regarding subscriber privacy as required by 47 U.S.C. §551.

SECTION 10.

UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. **Unauthorized Connections or Modifications Prohibited.** It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System.
2. **Removal or Destruction Prohibited.** It shall be unlawful for any firm, Person, group,

company, corporation, or government body or agency to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

3. **Penalty.** Any firm, Person, group, company, corporation or government body or agency found guilty of violating this Section may be fined not more than Two Hundred Dollars (\$200.00) and the costs of the action. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 11.

MISCELLANEOUS PROVISIONS

1. **Franchise Renewal.** Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.
2. **Amendment of Franchise Ordinance.** Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 11.6 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws. City shall act pursuant to local law pertaining to the ordinance amendment process.
3. **Compliance with Federal, State and Local Laws.** If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties.
4. **Periodic Evaluation.** The field of cable communications is rapidly changing and may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree of flexibility of this

Franchise, and to help achieve a continued advanced and modern System, the following evaluation provisions shall apply:

- a. Upon thirty days written notice to Grantee, the City may require an evaluation session. Evaluation sessions may occur no more than once annually beginning one (1) year from the Effective Date of this Franchise.
- b. All evaluation sessions shall be open to the public and notice of sessions published in the same way as a legal notice.
- c. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City and Grantee deem relevant.
- d. As a result of a periodic review or evaluation session, City and Grantee may develop such changes and modifications to the terms and conditions of the Franchise as are mutually agreed upon.
5. **Grantee Acknowledgment of Validity of Franchise.** Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

SECTION 12.

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. **Publication; Effective Date.** This Franchise shall be published in accordance with the applicable South Dakota law with the cost of such to be paid by Grantee. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 12.2.
2. **Acceptance.**

- a. Grantee shall accept this Franchise in writing. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes
- b. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.
- c. Grantee shall accept this Franchise in the following manner:
 - I. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
 - II. With its acceptance, Grantee shall also deliver any performance bond and insurance certificates herein that have not previously been delivered.

SECTION 13.

REPEALER

Existing Chapter 30 of the Revised Ordinances of the City of Hot Springs relating to South Dakota Cable, Inc. is hereby repealed and replaced with the new ordinance set forth hereinbefore.

[Ord. 1001, Eff. 10/21/03]