

ORDINANCE NO. 462

AN ORDINANCE REPEALING ORDINANCE # 408 AND ALL CONFLICTING PRIOR ORDINANCE PROVISIONS CONCERNING MIDCONTINENT COMMUNICATIONS, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, NORTH DAKOTA, HEREINAFTER CALLED THE "CITY", THAT ORDINANCE # 462 RELATING TO MIDCONTINENT COMMUNICATIONS BE ADOPTED AS FOLLOWS:

WHEREAS, the City of Rolla is authorized to grant non-exclusive franchise operations of communications systems within the City rights-of-way; and

WHEREAS, Midcontinent Communications, has applied for a franchise to construct, operate, and maintain communications services within the boundaries of Rolla; and

WHEREAS, the terms, conditions, and obligations provided herein are needed to protect the safety and welfare of the citizens of Rolla; and provide for the communications services needs of the City.

NOW, THEREFORE, THE CITY OF ROLLA, NORTH DAKOTA, HEREBY ORDAINS AS FOLLOWS:

Section 1: Purpose

This Ordinance shall establish a non-exclusive Franchise, which constitutes an agreement between the City of Rolla (hereinafter the "Grantor") and Midcontinent Communications (hereinafter the "Grantee"). The Grantee agrees to construct, maintain, and operate a communications services system for the distribution of telephone service, broadband services, and video service pursuant to the terms of the Franchise. The Grantor agrees to grant all necessary rights and privileges to use public rights of way necessary for the communications services system. This agreement shall, as of the effective date, supersede all existing franchises previously granted by the Grantor to Grantee, or any of its predecessors, subsidiaries, or affiliated companies.

Section 2: Length of Franchise

The length of this Franchise shall be for a term through midnight of December 31, 2034

Section 3: Service Area

The Grantee's service area shall be the entire area of the City of Rolla, in its present form or in any later reorganized, or enlarged, or re-incorporated form.

Section 4: Liability and Indemnification

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

- (a) Workforce Liability Insurance upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Rolla, North Dakota.
- (b) Property damage liability insurance to the extent of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars as to each occurrence and Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars aggregate, and personal injury insurance to the extent of Five Hundred Thousand and No/100 (\$500,000.00) Dollars aggregate. Excess bodily injury and property damage of One Million and No/100 (\$1,000,000.00) Dollars each occurrence and One Million and No/100 (\$1,000,000.00) Dollars aggregate. Automobile, bodily injury, and property damage liability combined of One Million and No/100 (\$1,000,000.00) Dollars each occurrence.

Grantee shall indemnify, protect, and save harmless the Grantor from and against losses and physical damage to property and bodily injury or death to persons, for property within the City, or by any act of Grantee, its agents or employees.

Section 5: Technical Standards

Grantee shall be governed by technical standards established by the Federal Communications Commission.

Section 6: Operation and Maintenance of System

- (a) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions in so far as possible shall be preceded by

notice and shall occur during periods of minimum use of the system, if possible.

- (b) All service requests and complaints should be responded to within forty-eight (48) hours of receipt.
- (c) If at any time the Grantor, acting through its City board, shall deem it necessary to make any improvements or changes on all or any part of the right of way of the City road which affect a utility located on City right of way, then and in such event, the Grantee shall within 15 days after written notice from the Mayor or auditor, proceed to alter, change, vacate or remove said utility from the City right of way so as to conform to said City roadway changes and as directed by the City Mayor. Such work shall be done without any cost whatsoever to the Grantor and shall be completed within the date specified in said written notice.
- (d) The Grantee shall obtain a building permit as provided by the Grantor before commencing any construction upgrade or extension of the System. The Grantor shall impose no permit fee upon the Grantee. The city auditor shall have the authority to sign the building permit immediately upon submission.
- (e) 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, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property. Said City approvals shall be obtained at a City Council Regular Meeting.

Section 7: Emergency Use of Facilities.

In the case of an emergency or disaster, the Grantee shall, upon request of the Grantor, make available its facilities to the Grantor for emergency use during the emergency or disaster.

Section 8: Successors or Assigns.

This Franchise shall be binding upon the Grantee, its successors, and assigns.

Section 9: Acceptance

This grant of Franchise and its terms and provisions shall be accepted by the Grantee by the submission of a written instrument, executed and sworn by a corporate officer of the Grantee before a Notary Public, and filed with the Grantor within sixty (60) days after the effective date of this Franchise.

Section 10: Effective Date

This Ordinance shall take effect five (5) days from the date of publication and adoption by the Grantor. The Franchise granted by this Ordinance shall not be effective until the Grantee files written acceptance thereof.

Section 11: Severability

Each section, subsection, or portion of this Ordinance shall be severable if any section, subsection, or portion shall be found to be invalid.

Section 12: Notice

Written notices shall be deemed to have been duly serviced if delivered in person to the individual or the entity for which it was intended, or if delivered by registered or certified U.S. mail to the last business address known to the party who gives notice. All notices and requests shall be addressed as follows:

GRANTOR:
City of Rolla
City Auditor's Office
PO Box 1200
14 First St SE
Rolla, ND 58367-1200

GRANTEE:
Midcontinent Communications
Attn: VP of Legal and General Counsel
4020 W Cayman Street
Sioux Falls, SD 57107
Email: notices@midco.com

Section 13: Franchise Fee

During the term of the rights granted herein, the Grantee shall pay as compensation to the Grantor a sum (Franchise Fee) equal to three percent (3%) of the total Gross Receipts for Grantee's video services. "Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers living within the corporate limits of the City for video programming services and premium pay services such as HBO. Gross Receipts shall not include revenues received from installation charges, or fees for reconnections, inspections, repairs or modifications, of any installation, equipment rental, or State and Federal taxes relating thereto.

The Franchise Fee shall be payable monthly, within thirty days of the end of each of the Grantee's fiscal month

Section 14: Rates

Grantee shall at all times maintain a website with a schedule setting forth rates and charges to be made to subscribers for basic cable service, including installation charges.

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

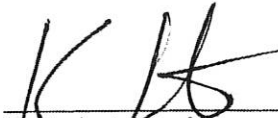
In the event that the Grantor has the authority to regulate the rates, the following procedure shall be used:

- (a) Before making any change in the rates and charges to subscribers for the Grantee's communications services, Grantee shall file in writing with the Grantor a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the Grantor takes no action to set the proposed rate change for hearing, said proposed rate change shall become effective upon the expiration of the thirty (30) days notice.
- (b) If the Grantor wishes to hold a hearing on the proposed rate change, the hearing shall be held within forty-five (45) days of the filing of the proposed rate change by Grantee. Following the hearing, the Grantor shall take final action on the proposed rate change within thirty (30) days.

Section 15: Grantor's Right to Revoke.

Grantor reserves the right to revoke, terminate or cancel a Franchise, if it is determined that a Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation within 10 days of notification of said violation.

First Reading: November 20, 2024
Second Reading: December 18, 2024
Adopted: December 18, 2024
Effective Date: January 1, 2025



Kevin Juntunen, Mayor

Attest:



Valerie McCloud, City Auditor

ACCEPTANCE

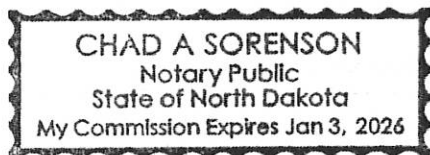
Patrick McCann, VP of Legal of Midcontinent Communications, does hereby accept the terms and conditions of the above Franchise.

Dated this the 19 day of December, 2024

MIDCONTINENT COMMUNICATIONS.

By: 

Subscribed and sworn to before me this the 19 day of December, 2024.



Chad Sorenson Notary Public
Burleigh County, South Dakota
My Commission Expires: 1-3-26