

BIG LAKE TOWNSHIP, MINNESOTA

ORDINANCE NO. 1012

AN ORDINANCE GRANTING A FRANCHISE TO MIDCONTINENT COMMUNICATIONS (“MIDCO”) TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM AND PROVIDE CABLE SERVICE IN BIG LAKE TOWNSHIP, MINNESOTA.

RECITALS

1. This Cable Franchise Ordinance (“Franchise”) is made and entered into by and between Big Lake Township, a municipal corporation of the State of Minnesota (“Township”) and Midcontinent Communications (“Midco”), a South Dakota Partnership, (“Grantee”).
2. Pursuant to Ordinance No. 1010, as adopted by the Township on April 22, 2020 (“Cable Ordinance”), the Township is authorized to grant and issue a non-exclusive Franchise authorizing the Grantee to provide Cable Service and construct, operate, and maintain a Cable System in the Township.
3. The Grantee timely submitted a request for a Franchise.
4. Upon evaluation of Grantee’s technical, financial, legal qualifications, completion of Franchise negotiations, and as a result of a public hearing, the Township finds that it is in the best interests of the Township and its residents to grant and issue a Franchise to Grantee.
5. This Franchise is nonexclusive and complies with applicable laws and regulations.

THE TOWN BOARD OF BIG LAKE TOWNSHIP HEREBY ORDAINS:

SECTION 1. GENERAL PROVISIONS

Section 1.1 Definitions.

Unless otherwise defined herein, the terms, phrases, and words contained in this Franchise have the meaning provided in the Cable Ordinance. Terms, phrases and words contained in this Franchise that are not defined here or in the Cable Ordinance will have their normal and customary meaning.

Section 1.2 Written Notice.

All notices, reports, or demands required to be given in writing under this Franchise or the Cable Ordinance must be delivered personally to any officer of Grantee or the Township Clerk or 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 Township	Big Lake Township Attn: Township Clerk Town of Big Lake Big Lake, MN 55309
If to Grantee:	Director, Regulatory Finance Midco 3901 N Louise Ave Sioux Falls, SD 57107 notices@midco.com
With copies to:	Director, Regulatory Finance Midco 3901 N Louise Ave Sioux Falls, SD 57107 notices@midco.com

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

SECTION 2. GRANT OF FRANCHISE

Section 2.1 Grant.

a. Grantee is authorized to deliver Cable Service and construct, operate and maintain a Cable System in the Rights-of-Way in the Township.

b. . This Franchise is granted pursuant to the Cable Ordinance, in all cases subject to and without waiving applicable law. This Franchise is a contract and except as to those changes which are the result of the City's lawful exercise of its general police powers, the City may not take any unilateral action which materially changes the explicit mutual promises in this contract. In the event of any conflict between the provisions of this Franchise and the Cable Ordinance, the provisions of this Franchise shall govern.

Section 2.2 Franchise Term.

This Franchise will be in effect for a period of fifteen (15) years from the date of acceptance by the Grantee, unless sooner renewed or revoked.

Section 2.3 Service Area.

a. This Franchise is granted for the corporate boundaries of the Township, as it exists from time to time, subject to the density requirement of Section 2.3(b) below.

b. The Grantee will extend its System and offer Cable Service to areas where such extension area has a density of at least thirty-two (32) residential units per cable mile of System, as measured from the nearest accessible tie-in point on the Cable System. Extension will be provided within a reasonable time, not exceeding 120 days, after a request for Service. Where the density is less than that specified above, Grantee shall inform Persons requesting Service that such Service will be provided upon payment of a portion of the cost of Installation or line extension and Grantee shall provide a free written estimate of such cost within fifteen (15) days of the Service request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.

SECTION 3. SYSTEM

Section 3.1 System Capacity.

The System will provide a minimum of 750 MHz of capacity. Grantee will offer at least 75 video programmed Channels throughout the term of this Franchise. Grantee's System will have return capability.

Section 3.3 Above Ground Facilities.

Pursuant to Section 5.3b of the Cable Ordinance, Grantee shall be permitted to install above ground System facilities no larger than approximately 50"X 36" and 36" tall without receiving prior approval from the Township.

SECTION 4. COMMUNITY SERVICES

Section 4.1 PEG Access Facilities.

a. Access Channels. Subject to Section 4.1(b) below, the Grantee must dedicate two (2) Channels for noncommercial public, education, and government access (hereinafter "PEG Access") programming. The PEG Access Channels must, to the extent required by applicable law, be cablecast on the Basic Cable Service tier. All Subscribers who receive Cable Services offered on the System must receive the PEG Access Channels at no additional charge. Nothing herein shall diminish the Township's rights to secure additional channels pursuant to Minn. Stat. § 238.084, Subd. 1(z), and applicable FCC regulations.

b. Channel Usage. The PEG Access Channels must be available for noncommercial use by the general public, local education authorities and local government on a first-come, first served, nondiscriminatory basis. During those hours that such PEG Access Channel is not being used by the general public, local educational authorities or local government, the Grantee may lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. The Grantee may also use this PEG Access Channels for local origination during those hours when the channel is not otherwise in use. The PEG Access Channels must be available for such noncommercial use as is determined solely by the Township (hereinafter “Township channel”). The Township shall have the right to extend two-way connections on mutually acceptable terms and conditions from public institutional sites to permit live transmission of PEG programming on PEG Channels to Grantee's headend and onto the System at the Township's expense. The Township may use the proceeds of the PEG Fee to pay such construction or PEG capital equipment costs. Upon request, the Grantee shall have a minimum of six (6) months, subject to weather conditions, to complete such System construction. Township shall, at all times, provide Grantee with the same video programming provided to other System operators in the Township.

c. Responsibility for PEG Access. The Grantee will have responsibility for PEG Access only as provided in this Section 4.1.

d. PEG Access Support. At any time during the term of this Franchise, the Township and Grantee may meet to discuss providing capital support for PEG access equipment and facilities as provided in this Section and consistent with federal law. PEG funds shall be for the exclusive use of the Township and shall not be used for purposes other than as prescribed by federal law. The Township shall conduct a public proceeding to determine the level of PEG capital support that is reasonable to meet the needs of the community, considering the cost to provide those needs. The Township shall notify the Grantee in writing at least thirty (30) days prior to such proceeding and of the amount of capital support requested, not to exceed what is actually needed for capital support and what is practicable considering the number of Subscribers in the Service Area. The Grantee shall be permitted to recover such capital costs from Subscribers, if allowed by law, and the resulting fee must not exceed one dollar (\$1.00) per Subscriber per month.

e. Access Rules. The Township may implement rules for use of the PEG Access Channels. Prior to the cablecast of any program on any PEG Access Channel established herein, any Person who requests access to the System to provide video programming must provide a written certification acceptable to Township which releases, indemnifies, and holds harmless Grantee, Township and their employees, offices, agents, and assigns from any liability, cost, damages and expenses, including reasonable expenses for legal fees, arising or connected in any way with said program.

f. Parity of Obligations. In the event there is Competition in the Township during the term of this Franchise, the Township will impose equivalent PEG Access obligations on all franchised providers of Cable Service in the Township and the Access Fee shall be identical for all providers.

Section 4.2 Drops and Service to Public Buildings.

a. Subject to applicable law, the Grantee must install one (1) Drop, one (1) outlet, and one (1) converter, and provide monthly Basic Cable Service without charge to the Big Lake Fire Department (20243 County Road 43) and, subject to Section 2.3b, to the Township Hall.

SECTION 5. ADMINISTRATION PROVISIONS

Section 5.1 Franchise Fee.

The Grantee must pay a Franchise Fee to the Township in an annual amount equal to five percent (5%) of its Gross Revenues.

Section 5.2 Rules of Grantee.

The Grantee may promulgate such rules, terms and conditions governing the conduct of its business provided that such rules, terms and conditions must not be in conflict with the provisions of this Franchise, the Cable Ordinance, or applicable laws or regulations.

SECTION 6. INDEMNIFICATION, INSURANCE, BONDS AND SECURITY FUND

Section 6.1 Indemnification.

By acceptance of this Franchise, the Grantee agrees to indemnify, defend, and hold the Township harmless in accordance with the Cable Ordinance.

Section 6.2 Insurance.

At the time of acceptance of this Franchise, the Grantee will file with the Township a Certificate of Insurance in accordance with the Cable Ordinance. The Grantee must maintain such insurance for the entire term of this Franchise.

Section 6.3 Performance Bond.

a. The Grantee must furnish the Township a performance bond in the amount of Five Thousand Dollars (\$5,000.00) in a form and with such sureties as are reasonably acceptable to the Township. At the time of acceptance of this Franchise, the Grantee will file with the Township a copy of the performance bond. The Grantee must maintain the performance bond until this Franchise expires or is terminated, and the Grantee has liquidated all of its obligations with the Township.

b. The performance bond must be conditioned upon Grantee's faithful performance in accordance with the terms of this Franchise, the Cable Ordinance, and applicable laws and regulations. The bond must provide that in the event the Grantee fails to comply with any law, ordinance or regulation, any damages or loss suffered by the

Township as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, will be recoverable jointly and severally from the principal and surety of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the Township which arise. In the event this Franchise is revoked or the rights hereunder relinquished or abandoned by Grantee, the Township must be entitled to collect from the performance bond any resultant damages, costs or liabilities incurred by the Township.

c. It may be difficult or impossible to accurately quantify actual damages or losses suffered by the Township due to a material violation or unsatisfied obligation under this Franchise, the Cable Ordinance, or applicable laws or regulations. Such material violations or unsatisfied obligations may, however, be presumed to harm the Township and the public's interest. Accordingly, the Township may, in its reasonable discretion and upon a demonstration of actual harm to the Township and/or Subscribers, collect from the performance bond liquidated damages in an amount of up to Two Hundred and Fifty Dollars (\$250.00) per violation of any provision of this Franchise, the Cable Ordinance, or applicable laws or regulations. Each violation may be considered a separate violation for which separate liquidated damages can be imposed. The aggregate amount of liquidated damages that the Township may impose over the term of the Franchise may not exceed \$20,000. In the event the Township wishes to make a claim for liquidated damages pursuant to this section, the Township must comply with Section 14 of the Cable Ordinance governing enforcement of the Franchise.

d. In the event the Township will make any claim against the performance bond, the Township must comply with Section 14 of the Cable Ordinance governing enforcement of this Franchise.

e. The Township's rights pursuant to the performance bond are in addition to all other rights the Township may have. Any action with respect to the performance bond does not constitute an exclusive remedy nor limit any other right.

Section 6.4 Construction Bond.

a. During periods in which System construction rebuild, upgrade or line extension costs are expected to exceed Fifty Thousand Dollars (\$50,000.00), Grantee shall provide a construction bond in the amount of Fifty Thousand Dollars (\$50,000.00).

b. In the event the Township will make any claim against the construction bond, the Township must comply with Section 14 of the Cable Ordinance governing enforcement of this Franchise.

c. The Township's rights pursuant to the construction bond are in addition to all other rights the Township may have. Any action with respect to the construction bond does not constitute an exclusive remedy nor limit any other right.

SECTION 7. MISCELLANEOUS REQUIREMENTS

Section 7.1 Amendment of Franchise Ordinance.

This Agreement is a contract, and neither party may unilaterally amend its terms except as provided herein Section 7.1. The Grantee and the Township may agree, from time to time, to amend this Franchise. Nothing herein restricts the Township's lawful exercise of its police powers, ordinance-making authority, and power of eminent domain.

Section 7.2 Force Majeure.

Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control. In the event Grantee fails to perform due to a cause beyond its reasonable control, Grantee shall provide reasonable notice to the Township of its discovery of such cause.

Section 7.3 Severability.

If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance is held, to any extent, invalid or unenforceable, the remainder and all the terms, provisions and conditions herein must, in all other respects, continue to be effective provided the loss of the invalid or unenforceable provisions do not substantially alter the agreement between the Parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the Franchise provision which had been held invalid or modified is no longer in conflict therewith, such Franchise provision will return to full force and effect and thereafter be binding.

Section 7.4 Nonenforcement by Township.

The Grantee is not relieved of its obligations to comply with this Franchise or the Cable Ordinance due to any failure or delay of the Township to enforce prompt compliance. The Township and Grantee may only waive its rights by expressly so stating in writing.

Section 7.5 Rights Cumulative.

All of the Township's and Grantee's rights and remedies pursuant to this Franchise are in addition to and not exclusive of any and all other rights and remedies available to the Township or Grantee.

Section 7.6 Work Performed by Others.

All obligations of this Franchise apply to any agent, subcontractor or other Person performing any work or services on behalf of the Grantee pursuant to this Franchise to the extent applicable, however, in no event will any such Person obtain any rights to maintain and operate a System or provide Cable Service.

Section 7.7 Acknowledgment of Validity of Franchise.

The Grantee acknowledges that it believes that the terms and conditions of this Franchise comply with current laws, are not unreasonable or arbitrary, and the Township has the power to enter into this Franchise on the terms and conditions contained herein.

SECTION 8. ACCEPTANCE OF FRANCHISE

Section 8.1 Publication and Effective Date.

This Franchise will be effective on the date of acceptance by Grantee. As required by applicable law, this Franchise must be enacted and published as an ordinance.

Section 8.2 Time for Acceptance.

a. The Grantee must accept this Franchise within thirty (30) days of enactment by the Township, unless the time for acceptance is extended by the Township. Acceptance by the Grantee will be deemed the grant of this Franchise for all purposes.

b. Upon acceptance of this Franchise, the Grantee and Township will be bound by all the terms, conditions and obligations contained herein.

Section 8.3 Manner for Acceptance.

The Grantee must accept this Franchise in the following manner:

a. The Franchise must be fully executed and acknowledged by Grantee and delivered to the Township.

b. The Grantee must also deliver any construction bond and insurance certificates required herein that have not previously been delivered, with its acceptance.

Section 8.4 Failure to Accept.

In the event the Grantee does not timely accept this Franchise in accordance with the requirements herein, this Franchise and all rights granted herein are null and void.

Passed and adopted this 11th of August, 2021.

BIG LAKE TOWNSHIP

By: _____
Its: Chairman of the Board

Attested By: _____
Its: Town Clerk

STATE OF MINNESOTA }
COUNTY OF SHERBURNE } SS

On this 11th day of August, 2021, within and for said County, personally appeared Bruce Aubol and Brenda Kimberly-Maas, to me personally known, being each duly sworn, did say that they are respectfully the Chairman of the Board and Town Clerk, of the Town of Big Lake, the municipal Township named in the foregoing instrument, was signed and sealed on behalf of said Township authority of its Town Board and they acknowledged said instrument to be the free act and deed of said municipal Township.

SEAL

NOTARY PUBLIC

ACCEPTED: This Franchise is accepted and we agree to be bound by its terms and conditions.

MIDCONTINENT COMMUNICATIONS (“MIDCO”)

By: _____
Its: _____

STATE OF _____ }
COUNTY OF _____ } SS

On this _____ day of _____, 2021, within and for said County, personally appeared _____, to me personally known, being each duly sworn, did say that they are respectfully the _____, of the Midcontinent Communications (“Midco”), the South Dakota Partnership named in the foregoing instrument, was signed and sealed on behalf of said Partnership authority of its Partnership and they acknowledged said instrument to be the free act and deed of said Partnership.

SEAL

NOTARY PUBLIC