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CHAPTER 3: PUBLIC PROPERTY AND IMPROVEMENTS

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ORDINANCE 35     CABLE TELEVISION ORDINANCE

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Section 35.01: DEFINITIONS.

Subd. 1: City. The City of St. Stephen, Minnesota.

Subd. 2: Class IV 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 communications system.

Subd. 3: Franchisor. The City of St. Stephen, Minnesota.

Subd. 4: Franchisee. Midcontinent Communications, its assignees and successors.

Subd. 5: FCC. The Federal Communications Commission of the United States.

Section 35.02: GRANT OF AUTHORITY. The City Council of St. Stephen hereby grants a cable communications franchise for the installation, operation and maintenance of a cable communications system within the City of St. Stephen to Midcontinent Communications, provided however that the franchise shall be subject to the terms and performance conditions contained herein.

Section 35.03: COMPLIANCE WITH STATE AND FEDERAL LAWS. The Franchisee and the Franchisor shall conform to all state and federal laws and rules regulating cable communications as they become effective.

Section 35.04: FRANCHISE TERM. The Franchise will be in effect from the Effective date until May 4, 2026 unless amended or renewed in accordance with law.

Section 35.05: FRANCHISE EXCLUSIVITY. This franchise shall be non-exclusive. The City may grant additional franchises at any time.

Section 35.06: SALE OR TRANSFER OF THE FRANCHISE; SALE OR TRANSFER OF STOCK.

Subd. 1. Any transfer of a franchise by sale, lease or other assignment, or any sale or other transfer of stock of the Franchisee so as to create a new controlling interest, shall be subject to the approval of the Franchisor. The Franchisor has 120 days from the submission of information regarding the successor's ability to operate in accordance with the terms of this Ordinance to purchase or approve or disapprove the transfer. Approval of a transfer shall not be unreasonably denied. Approval may be denied only upon a finding that the successor does not have the ability or capability to operate the franchise in accordance with the terms of this

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Ordinance and this franchise. Approval may be conditioned upon such reasonable terms and conditions which are not in conflict with state and federal laws and regulations.

Subd. 2. No transfer or lease of the rights granted herein shall be effective until the successor or lessee shall have filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale or lease, accepting the terms contained herein, and agreeing to perform all conditions required of the franchise. At that time, the successor or lessee shall also file with the City Clerk a duly executed bond, fully complying with any bonding requirements of this Ordinance.

Section 35.07: ACCESS TO FINANCIAL RECORDS. The City is granted the authority to audit the Franchisee's accounting and financial records upon reasonable notice. Upon request, the Franchisee shall file with the City reports of gross revenues and other information as the City deems appropriate.

Section 35.08: RATES, RATE CHANGE PROCEDURE AND RESIDENTIAL SUBSCRIBER CONTRACTS.

Subd. 1. Rates. Prior to offering service to any member of the general public, the Franchisee shall prepare a clear and concise list of all current subscription rates and charges, including all installation and disconnect charges, charges for optional services and charges or deposits for the use of equipment offered to subscribers for use with the service. A verified copy of Franchisee's list of rates and charges shall be filed with the St. Stephen City Administrator/Clerk and shall be available for public inspection at the office of the City Administrator/Clerk. An amended list of rates and charges shall be prepared and filed with the City Administrator/Clerk at any time there is any change or adjustment in the subscription rates and charges.

Subd. 2. Residential Subscriber Contract. The Franchisee shall file with the City Clerk a copy of the then current residential subscriber contract, if a written contract exists. The subscriber contract, and/or the summary of the terms of the non-written contract on file with the City Clerk shall be open to inspection by the public and shall govern the contractual relationship between the franchisee and all subscribers receiving service under the authority of this ordinance, except service provided to institutions, business premises or multiple housing locations, which service may be governed by separate written contract.

Subd. 3. Rate Regulations. The City reserves the right to seek certification by the FCC to engage in the regulation of rates, and implement reasonable regulations during the term of the franchise as permitted by law and/or the FCC. The City also reserves the right when allowed by law, to regulate rates for the installation and rental of equipment for the hearing impaired.

Section 35.09: FRANCHISE ADMINISTRATOR. The City Clerk, under the direction of the St. Stephen City Council, shall be responsible for continuing administration of the franchise. The City Council shall retain ultimate authority for the administration of a franchise.

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Section 35.10: LIABILITY INSURANCE. The Franchisee shall indemnify and hold harmless the City at all times during the term of the franchise and shall maintain throughout the term of the franchise insurance as follows:

Liability for damage to property	\$600,000.00
Liability for personal injury	\$600,000.00 per person \$1,000,000.00 per occurrence

These policies shall insure both the City and the Franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the franchise. A Franchisee shall provide the City with evidence of required coverage upon request.

Section 35.11: INDEMNIFICATION.

Subd. 1. Except in instances where the City or its employees are negligent, the Franchisee shall hold the City harmless from any and all claims and actions, litigations and from damage arising out of the construction, erection, installation, maintenance or operation of its property operated by authority of this Ordinance within the corporate limits of the City or the negligence of the Franchisee's employees in the operation thereof. The Franchisee shall defend in the name of the City any claims made against the City arising out of the franchise. The Franchisee also agrees to hold the City harmless from any and all claims and actions arising from alleged infringements of copyrights.

Subd. 2. Nothing contained in a franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injury to the Franchisee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place; or with the construction or reconstruction of any sewer or water system.

Section 35.12: PERFORMANCE BOND. Prior to beginning construction, and within a reasonable timeframe, the Franchisee shall obtain any permits required under City Code and furnish any security required therefore.

Section 35.13: CONSTRUCTION SCHEDULE. Franchises shall provide service to City residents within a reasonable time from when the franchise is granted. Absent evidence to the contrary, it shall be presumed that a "reasonable period" is no later than one (1) year from the grant of the franchise.

Section 35.14: CONSTRUCTION STANDARDS.

Subd. 1. Permits. The Franchisee shall obtain any required permits before construction of any communications system facilities, including the opening or disturbance of any street, sidewalk, driveway or public place. If the Franchisee fails to meet the conditions of the permit, the Franchisor, after reasonable notice to the Franchisee, and providing Franchisee the opportunity to remedy said complaint, can cause said problem to be remedied and bill the Franchisee for the costs incurred in so remedying.

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Subd. 2. Compliance with Codes. All wire, conduits, cable and other property and facilities of the Franchisee shall be located, constructed, installed, and maintained in compliance with applicable codes. The Franchisee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

Subd. 3. Relocation of Wires. In the event it becomes necessary for the City to relocate or remove the Franchisee's wires, conduits, cables and other property located in any street, right-of-way or public place to facilitate the undertaking of a public improvement which affects the cable equipment, Franchisee shall make all necessary changes in its equipment at its own expense, as requested, upon due notice from the City Council or its designated officer.

Subd. 4. Undergrounding. In those areas of the City where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall construct, operate, and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers, and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures. Any new lines, wires, conduit or cables shall be installed underground.

Subd. 5. Restoration. Upon completion of the work, the Franchisee must restore the general area of the work, including paving and its foundations, to the same condition that existed prior to commencement of the work and must exercise reasonable care to maintain the same condition for two (2) years thereafter. The work must be completed as promptly as weather permits. If the Franchisee does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the public ground to the same condition, the City may put it in the same condition at the expense of the Franchisee. The Franchisee must, upon demand, pay to the City the direct and indirect cost of the work done for or performed by the City, including but not limited to the City's administrative costs. To recover its costs, the City may first draw any security posted by the Franchisee and then recover the balance of the costs incurred from the Franchisee directly by written demand. This remedy is in addition to any other remedies available to the City.

Subd. 6. Franchisee Initiated Relocation. The Franchisee shall give the City written notice prior to a Franchisee initiated relocation of facilities. A Franchisee initiated relocation shall be at the Franchisee's expense and must be approved by the City, such approval not to be unreasonably withheld.

Subd. 7. City Required Relocation. The Franchisee must promptly and at its own expense, with due regard for seasonal working conditions, permanently relocate its facilities whenever the City requires such relocation.

Subd. 8. Relocation Where Public Ground Vacated. The vacation of public ground does not deprive the Franchisee of the right to operate and maintain its facilities in the City. If the vacation proceedings are initiated by the Franchisee or by the City, the Franchisee must pay the

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relocation costs. If the vacation proceedings are initiated by the City or other persons, the Franchisee must pay the relocation costs unless otherwise agreed to by the City, Franchisee and other persons.

Subd. 9. Inspection of Work. When the work is completed, the Franchisee must request an inspection by the Director of Public Works. The Director will determine if the work has been satisfactorily completed and provide the Franchisee with a written report of the inspection and approval.

Subd. 10. Notice. If the Franchisee is in default in the performance of the work authorized by the permit, including but not limited to restoration requirements, for more than thirty (30) days after receiving written notice from the City of the default, the City may terminate the rights of the Franchisee under the permit. The notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the Franchisee by personally delivering it to an officer thereof at its principal place of business in Minnesota or by certified mail to that address.

Subd. 11. City Action on Default. If the Franchisee is in default in the performance of the work authorized by the permit, the City may, after the above notice to the Franchisee and failure of the Franchisee to cure the default, take such action as may be reasonably necessary to abate the condition caused by the default. The Franchisee must reimburse the City for the City's reasonable costs, including costs of collection and attorney fees incurred as a result of the Franchisee default. The security posted under Section 35.12 will be applied by the City first toward payment for such reimbursement.

Subd. 12. Use of Public Ground. Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of public ground. The facilities are subject to additional conditions of the permit as established by the City including but not limited to (i) the right of inspection by the City at reasonable times and places; (ii) the obligation to relocate the facilities pursuant to Section 35.14, Subdivisions 3 and 4; and (iii) compliance with all applicable regulations imposed by the Minnesota Public Utilities Commission and other state and federal law, including prompt compliance with the requirements of the Gopher State One Call program, Minnesota Statutes Chapter 216D.

Subd. 13. Location. The facilities must be placed in a location agreed to by the City. The Franchisee shall give the City forty-five (45) days advance written notice of the Franchisee's proposed location of facilities within the public ground. No later than forty-five (45) days after the City's receipt of the Franchisee's written notice, the City will notify the Franchisee in writing of the City's acceptance or rejection of the proposed location. If the City rejects the Franchisee's proposed location, the City shall propose alternative locations. The City does not waive or forfeit its right to reject the location of facilities by failure to respond within the forty-five (45) days.

Subd. 14. Emergency Work. The Franchisee may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its

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facilities. In such event, the Franchisee must request a permit, if applicable, not later than the second working day thereafter and comply with the applicable conditions of the permit. In no event may the Franchisee undertake such an activity which will result in the closing of a street or alley without prior notification to the City.

Subd. 15. Street Improvements - Paving and Resurfacing. By May 15 of each year, to the extent practicable, the City will give the Franchisee written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain (i) the nature and character of the improvements; (ii) the streets upon which the improvements are to be made; (iii) the extent of the improvements, the time when the City will start the work; and, (iv) if more than one street is involved, the sequence in which the work is to proceed.

Subd. 16. Franchisee Protection of Facilities. The Franchisee must take reasonable measures to prevent the facilities from causing damage to persons or property. The Franchisee must take reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property, or the elements. The Franchisee must take specific protective measures when the City performs work near the facilities.

Subd. 17. Prior Service Connections. In cases where the City is undertaking the paving or resurfacing of streets and the facilities are to be located under such street, the Franchisee may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five (5) year period following the paving or resurfacing.

Subd. 18. Public Ground Other Than Right-Of-Way. Nothing in this ordinance is intended to grant to the Franchisee authority beyond that given by Minnesota Statutes §222.37 for use of the public right-of-way for construction and operation of facilities. If the City allows the Franchisee to use its non-right-of-way public ground, the terms of this ordinance apply to the extent they are consistent with the contract, statutory and common law rights the City owns in such property.

Section 35.15. TECHNICAL STANDARDS AND SPECIAL TESTING. The rules of the FCC related to cable communications systems contained in subpart K of part 75 of the FCC's rules and regulations (as amended) related to cable communications systems are incorporated herein by reference. The results of any tests required by the FCC shall be filed within 10 days of the conduct of such tests within the City. At any time after commencement of service to subscribers, the City may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Requests for such tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance; and such tests will be limited to the particular matter in controversy. The cost of said testing shall be borne by the Franchisee.

Section 35.16: SUBSCRIBER PRIVACY.

Subd. 1. No signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall

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be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

Subd. 2. No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or any lists that identify the viewing habits of subscribers may be sold or otherwise made available to any party other than the Franchisee and its employees for internal business use, or to the subscriber subject of that information, unless the Franchisee has received specific written authorization from the subscriber to make the data available.

Subd. 3. Written permission from the subscriber shall not be required for the systems conducting systemwide or individually addressed electron sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing.

Section 35.17: SUBSCRIBER COMPLAINTS.

Subd. 1. All franchises shall conduct their business in accordance with the customer service standards established by the FCC and 47 C.F.R. § 76.309.

Subd. 2. All complaints by the City or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to a franchise granted pursuant to this Ordinance shall be investigated by the Franchisee within two business days and resolved by the Franchisee. Any complaints not resolved to the satisfaction of the complaining party shall be communicated to the City. A record of unresolved complaints may be retained by the City and may be considered by the City Council in making decisions relating to the franchise.

Subd. 3. The Franchisee shall provide to the subscriber a toll-free or collect telephone number for the reception of subscriber complaints, and the Franchisee shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. Costs included in making repairs and adjustment shall be borne by the Franchisee unless it can be clearly determined that the repair or adjustment was made necessary by abuse or intentional misuse of the system by the subscriber. Costs of installation shall be borne by the subscriber.

Section 35.18: UNLAWFUL DENIAL.

Subd. 1. The Franchisee shall not deny access to cable service because of the income of a resident.

Subd. 2. The Franchisee shall not deny access to cable service to a geographical area of the City because of income demographics.

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Section 35.19: TERMINATION. The Franchisor shall have the right to terminate and cancel any franchise and all rights and privileges of a franchise, if the Franchisee attempts to evade any of the material provisions of the franchise or this ordinance, practices any fraud or deceit upon the City, or fails to operate the franchise in accordance with this Ordinance. The City shall provide the Franchisee with a written notice to the local and corporate office by certified mail, return receipt requested of the cause for termination and its intention to terminate the franchise and shall allow the Franchisee a minimum of thirty (30) days after service of the notice in which to correct the violation. The Franchisee shall be provided the opportunity for a public hearing before the City Council prior to the termination of the franchise. In the event that the Franchisor determines to terminate the franchise, the Franchisee has thirty (30) days from the date of termination of the franchise to take such available action challenging the termination, as provided by law, or its right to challenge termination is waived.

Section 35.20: ABANDONMENT. The Franchisee may not abandon any portion of the cable communications service provided under a franchise without three (3) months prior written notice to the City. Franchisee must compensate the Franchisor for damages resulting to it from such abandonment. Further, upon abandonment of any Franchise property, ownership of said abandoned property transfers to the City.

Section 35.21: REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE: Upon termination or forfeiture of a franchise, the Franchisee shall remove, if the franchising authority so requests, all of its plants, structures, works, pipes, mains, conduits, cables, poles and wires and refill at its own expense any excavation that shall be made by it and shall leave said streets, alleys, public ways and places, in as good condition as that prevailing prior to the Franchisee's removal of equipment and appliances. In the event the Franchisee fails to do so, the Franchisee shall pay to the Franchisor as liquidated damages 125 percent of the cost of removal.

Section 35.22: MUNICIPAL RIGHT TO PURCHASE SYSTEM. The City shall have the right to purchase any franchise or cable system offered for sale pursuant to the same terms and conditions of any bona fide offer to purchase. The Franchisee shall provide the City with a copy of the bona fide written offer, and the City has sixty (60) days of receipt to exercise its option to purchase. The purchase option shall be exercised in writing. If not exercised within sixty (60) days of notice, the City's right to purchase is forfeited with respect to that offer, but only that offer.

Section 35.23: ACCESS CHANNELS.

Subd. 1. If requested, the Franchisee shall provide to each of its subscribers who receive some or all of the services offered on the system, reception on at least one (1) specially designated access channel. The specially designated access channel may be used by local educational authorities and local government on a first-come, first served nondiscriminatory basis.

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Subd. 2. The City reserves the right to establish rules for the administration of the specially designated access channel and establish reasonable rates for the use and administration of the access channel.

Subd. 3. If requested, the Franchisee shall make available for public use the minimal equipment necessary for the production and playback of pre-recorded programs for the access channel, including the minimum equipment necessary to make it possible to record programs at remote locations with battery-operated portable equipment.

Section 35.24: FRANCHISE FEE.

Subd. 1. During the term of any franchise granted hereunder, the Franchisee shall pay to the City of St. Stephen at a minimum quarterly, a franchise fee in accordance with the terms of the Resolution granting the franchise. The franchise fee shall be equal to three percent (3%) of Gross Revenues. Each payment shall be accompanied by a brief report from a representative of Franchisee showing the basis for computation. The City may request additional financial information and may audit the Franchisee's accounting and financial records upon reasonable notice

Subd. 2. Gross Revenues. Gross Revenues are defined to include all revenue derived from the provision of cable services within St. Stephen, whether from basic television service, tier service, pay cable, service charges, and any other fees from video services and installation charges and equipment rental charges, but shall not include any taxes on cable service which are imposed directly or indirectly on any subscriber thereof if by any governmental unit or agency and which are collected by the Franchisor on behalf of such governmental unit or agency and bad debt.

Section 35.25: NON-INTERFERENCE. Installations shall be maintained so as not to interfere with television reception already in existence within the City.

Section 35.26: LINE EXTENSION. The City shall have the right to require reasonable extensions of the Franchisee's transmission and distribution system from time to time, and to make such rules and regulations as may be required to secure adequate and proper service and to provide accommodations for the public. The City may not require an extension into areas where there are less than twenty-five (25) residential units per mile of trunk or distribution cable as is required. The above limitation notwithstanding,

Section 35.27: OBSCENITY.

Subd. 1. For purposes of this section, obscenity shall mean a program when to the average person applying contemporary community Standards, the program taken as a whole appeals to the prurient interest; the program depicts or describes, in a patently offensive way, sexual conduct, that is, patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated or patently offensive representations or descriptions of masturbation, excretory functions or lewd exhibition of genitals; and the program taken as a whole lacks serious literary, artistic, political or scientific value.

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Subd. 2. It shall be a misdemeanor to originate or produce any obscene program which is transmitted over the cable communications system. However, neither the cable communications system whose facilities are used to transmit a program produced by a person other than the cable communications Franchisee, nor the officers, directors, or employees of the cable communications Franchisee, shall be liable for any penalty or damages arising from any obscene program presented thereon when the cable communications system or its employees does not originate or produce a program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any obscene program thereon unless the entity itself originates or produces the program.

Section 35.28: CONTRADICTIONS WITH STATE OR FEDERAL LAW. Any provisions of this Ordinance or a franchise which are in direct contradiction to any State or Federal law, rule or regulation of cable television franchising, shall be deemed invalid but only to the extent of the contradiction. All other portions of this Ordinance shall continue in full force and effect. As may be possible, all provisions of this Ordinance shall be construed in a manner consistent with State or Federal law so as to maintain the validity of those provisions.

Section 35.29: CABLE SERVICE TO PUBLIC BUILDINGS. Franchisee agrees to provide, free of charge, Basic Cable Service and the next highest level of service generally available to all Subscribers, to the locations identified in Exhibit A. Franchisee shall not be required to service such buildings unless it is technically feasible. Maintenance of said service shall be provided free of fees and charges.

Section 35.30: ADDITIONAL FRANCHISE REQUIREMENTS. The Franchisee shall also be subject to the following terms and conditions:

Subd. 1. The Franchisee shall provide for citizen participation in selecting programming, and consider citizen preference.

Subd. 2. The Franchisee shall provide customers with reasonable notice of rate changes. "Reasonable notice" shall be a minimum of thirty (30) days.

Subd. 3. The Franchisee shall offer customers a device to allow channels to be blocked-out.

Subd. 4. The Franchisee shall be subject to review and renegotiation at any time in the event of a significant change in technology, equipment or regulatory laws, or if the service provided by the franchise fails to meet industry standards of comparable sized communities with respect to channel capacity, system reliability or quality of signal.

Section 35.31. ANNEXED AREAS. The City shall give advance Notice to the Franchisee of any plans by the City to annex new property into the City boundaries.

Section 35.32. ENFORCEMENT. The City reserves the right to enforce any violation of this Ordinance by seeking declaratory or injunctive relief in Stearns County District Court. In the event the City is the prevailing party in any such action, the City shall be entitled to judgment for reasonable attorney's fees incurred in pursuing the action.