

ORDINANCE NO. 166

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AN ORDINANCE GRANTING A FRANCHISE TO MIDCONTINENT COMMUNICATIONS (“MIDCO”), ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OWN, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF FRAZEE, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF A FRANCHISE.

BE IT ORDAINED BY THE CITY OF FRAZEE, MINNESOTA:

STATEMENT OF INTENT AND PURPOSE

City intends, by the adoption of this Franchise, to bring about the development of a Cable System and the continued operation of such Cable System. Such development can contribute significantly to the communication needs and desires of the residents and citizens of City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents.

FINDINGS

In the review of the request for a franchise by Franchisee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Franchisee'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. Franchisee's plans for constructing and operating a Cable 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 Franchisee by City complies with the existing state and federal law; and
4. The Franchise granted to Franchisee is nonexclusive.

A. SHORT TITLE

This Franchise shall be known and may be cited as the "Midco Franchise."

B. 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 used in present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. "Basic Service" or "Basic Broadcast Service" means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7).
2. "Cable Service" means:
 - a. The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, or (iii) any other lawful communication service, and
 - b. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable Service as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(6).

3. "City" shall mean the City of Frazee, Minnesota.
4. "City Council" shall mean the City Council of Frazee, Minnesota.
5. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming, and which is provided to multiple Subscribers within a community, but such term does not include:
 - i. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - ii. a facility that serves Subscribers without using any public Right-of-Way;
 - iii. a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
 - iv. an open video system that complies with 47 U.S.C. § 573; or
 - v. any facilities of any electric utility used solely for operating its electric utility systems.

Cable System as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(7).

6. "Class IV Channel" means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the Cable System.
7. "FCC" is the Federal Communications Commission of the United States.
8. "Franchise" means this cable communications franchise ordinance including any renewal of this ordinance, which authorizes the ownership, construction and operation

and maintenance of a Cable System.

9. "Franchisee" is Midcontinent Communications, its affiliates or successor in accordance with the provisions of this Franchise.
10. "Franchise Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted subject to the line extension specifications in Section O herein.
11. "Gross Revenues" means the following revenues received by the Franchisee or its Affiliates from the operation of the Cable System to provide Cable Service in the City: 1) the monthly service fees for basic broadcast service; 2) expanded basic tiers and pay television fees and pay-per-view service. The term "Gross Revenues" shall not include Installation fees, disconnection fees, pay television fees and pay-per-view service, upgrade and downgrade of service fees, fees for telecommunications services, if any, fees for the sale, leasing, or servicing of equipment, network capacity and facilities rent for the provision of non-cable services (voice or data services), investment income, franchise fees, advertising revenues, late fees, any fees itemized and passed through as a result of franchise imposed requirements, tower rent, or any taxes or fees on services furnished by Franchisee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Franchisee for such governmental unit.
12. "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audio or video signals to Subscribers for a fee or charge, in addition to the charge for Basic Service or Cable Service.
13. "Person" shall mean any person, firm, partnership, association, corporation, limited liability entity or organization of any kind and any other legally recognized entity.
14. "Street" means the space above and below each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within City limits: street, road, highway, freeway, waterway, lane, alley, path, court, sidewalk, parkway or drive or any easement, right-of-way or similar public property.
15. "Subscribers" are those persons lawfully contracting to receive cable communications services furnished under this Franchise by Franchisee.

C. COMPLIANCE WITH MINNESOTA STATUTES CHAPTER 238

This Franchise shall at all times be in compliance with Minnesota Statutes Chapter 238. The City and Franchise shall comply with state and federal laws and regulations as they become effective.

It shall be unlawful for any Person to construct, operate or maintain a Cable System in the City unless such Person shall have first obtained and shall currently hold a valid cable communications franchise. All cable communications franchises granted by the City shall contain terms and conditions no more

favorable or less burdensome than those contained herein in accordance with the provisions of Minn. Stat. chapter 238.08 subd. 1(b).

D. COMPLIANCE WITH STATE AND FEDERAL LAWS

The Franchisee and the City shall conform to all state laws and rules regarding cable communications not later than one (1) year after they become effective unless otherwise stated and to all federal laws and regulations regarding cable communications, as they become effective.

The Franchisee 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 Franchisee to exercise its rights and perform its obligations under this Franchise and ensure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereto, the rules of the FCC, federal, state or local law or any other body having lawful jurisdiction thereof.

E. FRANCHISE TERM

This Franchise shall extend for an initial term of fifteen (15) years and shall automatically renew for an additional term of term of fifteen (15) years unless either Franchisee or City provides written notice six (6) months prior to franchise expiration. If such written notice is provided, the parties agree to conduct franchise renewal proceedings in accordance with 47 U.S.C. Section 546 (a-g) or other applicable state and federal law.

F. FRANCHISE EXCLUSIVITY

This Franchise is non-exclusive.

G. SALE OR TRANSFER

The Franchisee shall not sell or otherwise transfer its rights so as to allow a new controlling interest under this Franchise without the prior written consent of the City which consent shall not be unreasonably withheld, delayed or conditioned. Any such sale, transfer or assignment shall be subject to, and completed pursuant to Minnesota Statutes Section 238.083. The City hereby consents to the assignment by the Franchisee of its rights under this Franchise to any Person controlling, controlled by or under common control with Franchisee.

H. RATES AND INSTALLATION CHARGES

A copy of the current rates and charges assessed by Franchisee shall be provided to the City upon written request of the City.

The Franchisee may, in its sole discretion, establish a modified billing rate for seasonal Subscribers in accordance with applicable state and federal laws.

All Subscribers, as a condition of receiving Cable Service, shall agree to the terms and conditions imposed upon the Franchisee by Franchisee's Cable Service suppliers.

Nothing herein shall limit the right of Franchisee to impose upon its Subscribers state or local sales taxes, franchise fees, other legally permissible fees, or specific copyright fees for special programming events.

The Franchisee shall notify its Subscribers and/or publish any proposed changes in rates or charges at least thirty (30) days in advance of the effective date for such changes in accordance with applicable FCC regulations.

The City may regulate the rates for the provision of Basic Service provided over the Cable System to the extent permitted by federal law. In exercising its jurisdiction to regulate any such rates, the City will adhere to the regulations adopted by the FCC at 47 C.F.R. § 76.900 et seq. as they may be amended from time to time. In the event that the City elects to regulate rates it shall, after notice, hold a public hearing for the consideration of views of interested parties with respect to initial rates filed.

The terms of any Subscriber contracts utilized by Franchisee shall be made available upon written request of the City.

I. FRANCHISE FEE

During the term of this Franchise, Franchisee shall pay to the City a Franchise Fee in an annual amount of up to two percent (2%) of its Gross Revenues. The City may by Resolution annually modify the amount of the Franchise Fee. The City shall provide notice of any modification in the Franchise Fee amount to Franchisee on or before November 1st. Any change in the Franchise Fee amount shall be effective on January 1st of the following year.

Any payments due under this provision shall be payable at least quarterly. The payment shall be made within sixty (60) days of the end of each of Franchisee's current fiscal quarters together with a report in form reasonably acceptable to City and Franchisee and which shows the basis for the computation.

All amounts paid shall be subject to audit by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Franchisee's books and records, City agrees to execute a reasonable non-disclosure agreement to protect the confidentiality of any information made available by Franchisee.

J. FRANCHISE ADMINISTRATION

The office of the City Clerk shall be responsible for the continuing administration of this Franchise.

K. LIABILITY INSURANCE

The Franchisee shall indemnify and hold harmless the City at times during the term of the Franchise for Franchisee's negligent acts and shall maintain throughout the term of the Franchise liability insurance in the amount of not less than \$1,000,000.00 combined limits insuring 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.

L. LIABILITY FOR INJURY TO FRANCHISEE

Nothing in this Franchise shall relieve any Person from liability arising out of injury to the Franchisee or the Franchisee's property, including without limitation injury occurring as a result of performing any work connected with grading, regarding or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system.

M. PUBLIC HEARING RE: FRANCHISEE'S CREDENTIALS

The Franchisee's technical ability, financial condition, and legal qualifications were considered and approved by the City in a full public hearing proceeding affording reasonable notice and a reasonable opportunity to be heard.

N. CHANNEL CAPACITY

The Franchisee shall construct and/or maintain a Cable System capable of transmitting from its head end a minimum of 10 channels. Nothing in this Section N shall prevent the Franchisee from upgrading the Cable System when the need arises.

O. CONSTRUCTION SCHEDULE

Franchisee shall construct its new telecommunications facility within the Franchise area with anticipated completion by December 31 of the second year after construction commences.

1. This Franchise is granted for the Franchise Area. Franchisee shall use commercially reasonable efforts to extend the Cable System and provide Cable Service to households within the Franchise Area when practical and financially feasible. Franchisee shall, upon request, provide the City with a written explanation regarding the feasibility of extending the Cable System within the Franchise Area to areas which are not served by Franchisee. Nothing in this Franchise shall prevent Franchisee from extending the Cable System or from entering into mutually acceptable agreements with other parties regarding the extension of the System to unserved households. Access to Cable Service shall not be denied any group of potential cable Subscribers because of the income of the residents.

P. EASEMENTS AND CONSTRUCTION AUTHORIZATIONS

The City hereby grants unto the Franchisee an easement under, over and across its municipal properties, including, but not limited to roads, streets, sidewalks, public utility easements and driveways and all public places for the purpose of constructing and operating and maintaining a Cable System. Franchisee's duty to provide Cable Service to any Subscriber or Subscribers is conditioned upon the receipt of Franchisee of necessary easements from private parties without unreasonable cost or effort to Franchisee. Franchisee shall have the right, but not the obligation, to utilize its Cable System to provide any other communications services as may be permitted in accordance with

applicable laws. This Franchise shall govern only the provision of Cable Services over the Cable System.

The Franchisee shall obtain a permit from the proper municipal authority before commencing construction of any communications system, including the opening or disturbance of any road, Street, sidewalk, driveway, or public place. If the Franchisee fails to meet the conditions of the permit, the City shall have the right to correct or cause to be corrected, at the sole expense of the Franchisee any violations of the conditions of the permit such as the return of land to its previous grading and the cleanup of construction debris. Franchisee shall comply with all applicable provisions of the City code of ordinances governing use of the City's public rights-of-way.

Q. COMPLIANCE WITH APPLICABLE CODES

All wires, 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.

R. RELOCATION OF PLANT

The following procedure shall be used by the Franchisee and City for the relocation or removal of the Franchisee's wires, conduits, cables and other property located in a Street, right-of-way, or public place whenever the City undertakes public improvements which affect the Franchisee's property.

The City shall give ninety (90) days written notice to the Franchisee of the actions it wishes the Franchisee to take with respect to the relocation or removal of the Franchisee's equipment and shall allow a reasonable period of time thereafter to complete such request. The Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove its property when required by the City for the purpose of undertaking any public improvements.

Any other Person requesting relocation removal of the Franchisee's property shall, as a condition of such request, be required to pay to the Franchisee in advance an amount of money sufficient for reimbursement of all costs of such relocation or removal. Any Person which damages Franchisee's property shall reimburse the Franchisee for the cost of all necessary repairs and testing and for the loss of revenues, if any, to the Franchisee caused by an interruption of Cable Service due to the damaging of Franchisee's property.

S. TECHNICAL STANDARDS

The rules and regulations contained in subpart K of part 76 of the FCC's rules and regulations relating to Cable Systems are required to be adhered to by Franchisee unless or until, superseded by any future federal or state standards during the term of this Franchise. The Franchisee shall, upon request, meet with City to discuss the availability of technological innovations and attempt to establish priorities for making such innovations available.

T. SPECIAL TESTING

In the event that special testing is required to determine the source of technical difficulties, the Franchisee shall be responsible for the costs of special testing to the extent such testing reveals that Franchisee has not complied with FCC technical standards, otherwise the City shall bear the costs of such special testing.

U. NONVOICE RETURN CAPABILITY

The Franchisee shall provide a Cable System having the technical capability for nonvoice return communications. Nothing herein shall be construed to require the Franchisee to supply or otherwise provide to the Subscribers any terminal equipment or device necessary to utilize the nonvoice return capability of the System. The Franchisee shall provide such a capability upon request by a Subscriber with respect to the energized cable, cable "drops" and connections.

Upon such request, Franchisee shall propose rates and charges to apply to installation and use of such capability by Subscribers.

V. SUBSCRIBER PRIVACY

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 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 (1) year which shall be renewed at the option of the Subscriber. No penalty shall be invoked for 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 of monitoring individual viewing patterns or practices.

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

Written permission from the Subscriber shall not be required for the Systems conducting system wide or individually addresses electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth.

W. SUBSCRIBER COMPLAINTS

All reasonable complaints by the City, Subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the Cable System shall be promptly investigated by the Franchisee.

Complaints regarding the quality of service, equipment malfunctions, and similar matters shall first be directed to Franchisee's office. Should Franchisee fail to satisfy a reasonable complaint, it may then be

directed to the City for investigation. In response to a complaint, Franchisee shall be afforded a reasonable opportunity to present written and oral statements of its position. Appeal from the action of the City may be made to the appropriate judicial or administrative forum.

X. REPAIRS AND COMPLAINTS

To the extent required by federal law and requested by the City, Franchisee will print the name, address and telephone number of the City and the FCC's telephone number or address, on all monthly Subscriber bills who reside in the Franchise Area. The Franchisee shall provide a toll-free or collect telephone number for the reception of Subscriber complaints from the Franchise Area and shall maintain a repair service capable of responding to Subscriber requests for repair within twenty-four (24) hours after receipt of the request. The Franchisee shall bear the costs of servicing and repairing the Cable System caused by defects in the System or other factors not caused by the Subscriber, its agents, guests, or family members. The Subscriber shall pay the costs incurred by Franchisee in servicing and repairing the Cable System caused by the Subscriber, his/her agents, guests or family members.

Y. TERMINATION

The City reserves the right to terminate and cancel any Franchise granted hereunder and rescind all rights and privileges associated therewith in the event that:

1. the Franchisee substantially violates any material provision of this Franchise or is found by a court of law to have practiced any fraud or deceit upon the City;
2. the Franchisee is adjudicated insolvent, enters into receivership or liquidation, files an application for bankruptcy or for composition of creditors, is unable to pay its debts as they mature or is in financial difficulty or sufficient consequence so as to jeopardize the continued operation of the Cable System;
3. the Franchisee commits any material violation of any FCC or applicable state order or ruling or the order or ruling of any other governmental body having jurisdiction over the Franchisee, unless the Franchisee is lawfully contesting the legality or applicability of such rule or order; or
4. the Franchisee knowingly fails to provide Cable Service to a substantial portion of lawful Subscribers in the Franchise Area for a period of thirty (30) or more days. Franchisee shall not be responsible for failure to provide Cable Service to the extent such failure results from events not within Franchisee's control, including, but not limited to, acts of God, strikes, inability to obtain materials or contract labor, sabotage, riots or civil disturbances, loss of utilities and natural disasters.

Upon the occurrence of any of the above-listed events, the City shall provide the Franchisee with written notice citing the reasons alleged to constitute cause for termination of the Franchise. The City shall allow the Franchisee a reasonable time, but in any event no less than sixty (60) days subsequent to receipt of the notice, in which to remedy the cause. If, during such period, the cause is remedied to the satisfaction of the City, the City shall declare the notice to be null and void. If the cause is not remedied to the satisfaction of the City during such period, the City shall provide the Franchisee with

an opportunity to be heard at a public hearing before the City prior to adoption of any action for the termination of the Franchise.

In the event that the City takes any action to terminate the Franchise, the Franchisee shall have a period of sixty (60) days, beginning the day next following the date at which action to terminate the Franchise is ordered, within which to file an appeal with a court of competent jurisdiction.

During such sixty (60) day period and until the final determination of the appeal, if an appeal is taken, the Franchise shall remain in full force and effect, unless the term thereof sooner expires. If the action of the City is upheld, the Franchise shall terminate as provided by law; if the action of the City is reversed, the Franchise shall remain in full force and effect during the term thereof unless sooner terminated in accordance with law.

The parties have determined that no bond is required to be posted to secure Franchisee's performance under this Franchise.

Z. ABANDONMENT

The Franchisee may not abandon any portion of the cable communications service provided hereunder without having given three (3) months prior written notice to the City. No cable communications company may abandon any cable communications service or any portion thereof without compensating the City for damages resulting to it from such abandonment.

AA. REMOVAL OF CABLE EQUIPMENT UPON TERMINATING OR FORFEITURE

Upon termination or forfeiture of a Franchise, the Franchisee shall remove its cable, wires, and appliances from the streets, alleys, and other public places within the Franchise Area if the City so requests in writing. The City hereby consents to the abandonment of any buried property in place, the Franchisee shall submit to the City an instrument to be approved by the City transferring ownership of such property to the City.

In the event the Franchisee fails to remove its equipment within a reasonable time after the written request of the City, the City may accept bids for a contract to remove the equipment. The Franchisee shall have the right to bid on such a contract. The City may award the contract to the appropriate bidder and charge the costs of such contract to the Franchisee. The provisions of this Section shall not apply to equipment of the Franchisee which is buried; provided, however, that Franchisee shall transfer ownership of any buried equipment not so removed to the City.

BB. CITY'S RIGHT TO PURCHASE SYSTEM

In the event that Franchisee decides to sell or otherwise transfer the Franchise and/or Cable System, the City shall have a first right of refusal to purchase the Franchise and/or Cable System on terms substantially identical to those of any prospective purchaser's bona fide offer. The Franchisee shall give written notice of the terms and conditions of a prospective sale to the City at least thirty (30) days prior to the proposed closing date of such sale. In the event the City does not, within twenty (20) days from the receipt of such notice, give written notice to Franchisee of its intent to exercise the option to purchase on identical terms and conditions, the Franchisee may sell or otherwise transfer the Franchise

and/or Cable System on those terms and conditions. In the event the City exercises its option to purchase, the closing date for such a sale shall occur within a reasonable time after such exercise.

CC. ACCESS CHANNELS

The Franchisee shall provide to each of its Subscribers who receive all, or any part of the total services offered on the Cable System, reception on at least one (1) specially designated access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the general public, local education authorities, or local government, the Franchisee may use this specially designated access channel.

The Franchisee shall establish rules for the administration of the specially designated access channel. This Franchise does not require Franchisee to provide any equipment for the provision of local programming in the City.

DD. UNAUTHORIZED CABLE TAPPING

It shall be unlawful for any Person to obtain any cable communications services by installing, rearranging, or tampering with any facilities or equipment of any cable communications company, or any Person unless the same is done with the knowledge of and with the permission of such cable communications company, firm, or private person. Any Person found guilty of a violation of any of the provisions of this Section shall be deemed guilty of a misdemeanor for which a sentence of not more than ninety (90) days or a fine of not more than \$500.00, or both, may be imposed.

EE. AMENDMENTS

Nothing in this Franchise shall prevent the City and Franchisee from amending this Franchise so long as such amendment has been mutually agreed upon in writing by both the City and Franchisee.

FF. SEPARABILITY

1. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is for any reason held invalid or unconstitutional by any court of competence jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

2. Should any provision of this Franchise be inconsistent or at variance with any rule, regulation or policy, in whole or in part, of the FCC or any other agency having jurisdiction, such provision shall be invalid, but the remaining provisions hereof shall not be affected hereby.

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GG. MISCELLANEOUS PROVISIONS

1. Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism, storm or other similar catastrophes; national emergencies; insurrection; riots; wars; or strikes, lockouts or work stoppages.

2. Repeal of prior Ordinances. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Passed by the City of Frazee, Minnesota this ____ day of _____, 202__.

ATTEST:

By: _____

By: _____

Its: _____

Its: _____

ACCEPTANCE

The terms and conditions of the above Ordinance No. 166 are hereby accepted by Midcontinent Communications, a South Dakota general partnership, this ____ day of ____, 202__

Midcontinent Communications
By: Midcontinent Communications Investor, LLC
Managing Partner of Midcontinent Communications

By: _____

Its: _____