



**Box 263**  
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<http://www.audubonmn.govoffice2.com/>

## AUDUBON CITY COUNCIL AGENDA

Special Meeting  
March 23, 2021 ~ 4:30 PM  
Audubon City Hall  
[Zoom link](#)

1. CALL TO ORDER
2. ROLL CALL
3. [ORDINANCE 173](#) – CABLE FRANCHISE FOR MIDNONTINENT COMMUNICATIONS
4. [RESOLUTION 2021-09](#) – RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND ORDING ADVERTISEMENT FOR BIDS
5. SEASONAL WORKER POSTING
6. CITY HALL OPENING
7. ADJOURNMENT



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## Ordinance 173

An Ordinance Granting a Cable Communications Franchise to  
Midcontinent Communications

### DEFINITIONS:

1. "Franchisor" or "franchising authority" means the City of Audubon, Minnesota.
2. "Franchisee" means Midcontinent Communications dba Midco.
3. "Franchise" means Audubon City ordinance No. 173, as from time to time amended.
4. "FCC" means Federal Communications Commission of the United States.
5. "Cable System" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment up to the point of demarcation to the customer 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:
  - a. a facility that serves only to retransmit the television signals of one or more television broadcast stations;
  - b. a facility that serves Subscribers without using any public right-of-way;
  - c. a facility of a 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;
  - d. an open video system that complies with 47 U.S.C. §653; or
  - e. any facilities of any electric utility used solely for operating its electric utility systems.
6. The words "shall" and "must" are mandatory.
7. The word "may" is permissive.
8. The words "may not" are unconditionally prohibitive.

### GRANT OF AUTHORITY:

The Audubon City Council ordains that a cable communications system within the City of Audubon, subject to the following terms and performance conditions:

- A. **COMPLIANCE WITH MINNESOTA STATUTES, CHAPTER 238.**  
The Franchisee shall, at all times, comply with the provisions of Minnesota Statutes, Chapter 238, as from time to time amended.
- B. **COMPLIANCE WITH STATE AND FEDERAL LAWS.**  
The Franchisee and the franchising authority shall conform to all laws and rules of the State of Minnesota regarding cable communications no 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.
- C. **FRANCHISE TERM.**  
The term of the Franchise shall be seven (7) years and any renewal of the Franchise shall be determined upon renewal and for a period of not more than fifteen (15) years.

D. FRANCHISE NONEXCLUSIVITY.

This Franchise is nonexclusive.

E. SALES OR TRANSFER OF THE FRANCHISE, SALE OR TRANSFER OF SYSTEM OWNERSHIP.

The sale or transfer of this Franchise, in whole or in part, or the sale or transfer of a majority of Franchisee's assets, or of the stock of Franchisee so as to create a new controlling interest in the System, is prohibited, except upon the approval of the Franchisor, which approval shall not be unreasonably withheld. Such sale or transfer shall be completed pursuant to applicable state law.

F. SUBSCRIBER CHARGES.

1. The Franchisee's current subscriber charges are available for inspection at the Franchisor's website, [www.midco.com](http://www.midco.com).

G. FRANCHISE ADMINISTRATOR.

The Audubon City Clerk shall be responsible for the ongoing administration of this Franchise.

H. INDEMNIFICATION AND LIABILITY INSURANCE.

At all times during the term of the Franchise, the Franchisee shall defend, indemnify and hold harmless the Franchisor from any liability relating to this Franchise, and maintain commercial general liability insurance in the amount of not less than an aggregate coverage of \$1,000,000 and a minimum limit per occurrence of \$500,000, with an endorsement naming the Franchisor as an additional insured. The Franchisee shall furnish on an annual basis to the Franchisor a Certificate of Insurance as evidence of coverage.

I. LIABILITY FOR INJURY TO FRANCHISEE'S FACILITIES.

Nothing in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the Franchisee's facilities while 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.

J. PUBLIC HEARING REGARDING FRANCHISEE'S CREDENTIALS.

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

K. DESCRIPTION OF SYSTEM, CONSTRUCTION SCHEDULE.

Within ninety (90) days of the passage of this Franchise, the Franchisee shall apply for all governmental permits, licenses, certificates, and authorization required for the construction of the system. Within one year of its receipt of such governmental authorizations, the Franchisee shall extend its facilities throughout the Franchise area and provide persons along the route of the facilities with individual drops, if desired by such persons. The requirements of this Section L may be waived by the franchising authority only upon the occurrence of the unforeseen events or acts of God.

L. AUTHORIZATION TO COMMENCE CONSTRUCTION.

The Franchisee shall obtain a permit from the Franchisor prior to commencing construction of any communication system, including the opening or disturbance of any street, sidewalk, driveway or public place.

M. FRANCHISEE RULES.

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 the Franchisee to exercise its rights and performance obligations under this Franchise and to assure uninterrupted service to each and all of its customers. Such rules, regulations, terms and conditions shall not, however, be in conflict with the provisions hereof or the laws of the Federal Government or the State of Minnesota and, if required by law, shall be subject to approval by proper federal and/or state regulatory bodies.

N. CONSTRUCTION AND REPAIR STANDARDS.

The Franchisee shall, upon completion of any work requiring the opening of any street or public place, restore the same, including the pavement and its foundations, to as good a condition as it formerly was, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with due diligence.

O. 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.

P. RELOCATION OF WIRES, ETC.

Whenever the Franchisor shall during the period of this Franchise, undertake any public improvement or authorize any project or action for a public purpose which affects cable communications equipment, it shall use reasonable efforts to notify the Franchisee so as to provide advance notice adequate to allow for necessary planning in order to minimize service interruption to subscribers. Relocation or replacement of Franchisee's wires, conduits, cables, vaults, pedestals, utility holes, poles, and other fixtures shall be done at the Franchisee's expense.

R. TECHNICAL STANDARDS.

The rules contained in subpart K of Part 76 of the FCC's rules and regulations relating to cable communications systems are incorporated herein by reference. The results of any test required by the FCC shall, upon request, be filed with the Franchisor within thirty (30) days from the date of such request.

S. 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 such special testing but only if the testing reveals the Franchisee to be responsible for the technical difficulties.

T. REPAIRS AND COMPLAINTS.

The Franchisee shall provide at least a toll-free or collect telephone number for the reception of subscriber complaints and 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.

U. FRANCHISOR'S RIGHT TO TERMINATE AND TERMINATION PROCEDURES.

1. In addition to all other legal and equitable rights and remedies available to the Franchisor in connection with a breach by the Franchisee of this Franchise, the Franchisor shall have the right to terminate this Franchise, and all rights and privileges pertaining thereto, in the event that:
  - (a) Franchisee breaches any material provision of this Franchise and fails to cure such breach as provided herein:
  - (b) Franchisee attempts to evade any of its obligations under this Franchise:
  - (c) Franchisee commits any fraud or deceit against the Franchisor or any subscriber;
  - (d) Franchisee becomes insolvent, is unwilling or unable to pay its debts as they come due, or is adjudged a bankrupt: or
  - (e) Franchisee misrepresents a material fact in applying for or negotiating for approval of this Franchisee or any renewal thereof.

In the event Franchisor determines that any of the foregoing events ("default events") has occurred. Franchisor may make a written demand on Franchisee that it cure any default event within thirty (30) days of receiving Franchisor's demand. Franchisee shall be deemed to have received written demand from Franchisor three days after Franchisor deposits a written demand addressed to Franchisee, postage prepaid, in the United States Mail.

2. If Franchisee fails to cure any default event within said thirty (30) days, Franchisor may place the issue of termination of the Franchise before the City Council at a regularly scheduled meeting of the council. If the City Council determines that good cause exists to terminate the Franchise, Franchisor shall proceed as follows:
  - (a) Franchisor shall conduct a public hearing on the issue of termination of the Franchise upon fourteen (14) days written notice to Franchisee, which notice shall include the date, time and place of the hearing and shall specify the default events which the Franchisor believes justify termination of the Franchise: and
  - (b) If after a full public hearing is conducted, the Franchisor determines that Franchisee has committed a default event and has not cured the same, the Franchisor may, by resolution duly adopted in writing, terminate the Franchise and all of Franchisee's rights and privileges thereunder, effective thirty (30) days after the public hearing and only if Franchisee fails to cure its default within said thirty (30) days. The City Council shall place the issue of termination on its agenda for the first Council meeting following the expiration of the thirty (30) day period.

V. 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 Franchisor. No cable communications company may abandon any cable communications service or any portion thereof without compensating the Franchisor for damages resulting to it from such abandonment.

W. REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE.

Upon termination or forfeiture of the Franchise, the Franchisee shall remove its cable, wires, and appliances from the streets, alleys, and other public places within the Franchise area if the franchising authority so

requests. If not so removed, the franchising authority shall have the right to remove them at the cost and expense of the Franchisee without any liability therefore and without any duty to account to the Franchisee for the property removed.

X. MUNICIPAL RIGHT TO PURCHASE SYSTEM.

If the Franchise or cable system is offered for sale, the franchising authority shall have the first right, but no obligation, to purchase the system. Any such right shall be exercised within 90 days of any delivered Notice.

Y. ACCESS CHANNELS.

1. The Franchisee shall provide to each of its subscribers who will receive all, or any part of, the total services offered on the system, reception on at least one specifically designated access channel available for the use by the general public, local education authorities, and local government on a first come, first served, nondiscriminatory basis.

Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement. Channel time and playback of prerecorded programming on this specially designated access channel shall be provided to the general public, provided, however, that personnel, equipment, and production costs may be assessed for live studio presentations exceeding five minutes in length. Charges for such production costs shall be consistent with the goal of affording the public a low-cost means of television access.

The specially designated access channel may be used by Franchisee during those hours when the channel is not in use by the general public, local educational authorities, local government, on this specially designed access channel required in this provision.

The Franchisee shall establish rules pertaining to the administration of the specially designated access channel(s).

Z. OPERATING STANDARDS.

1. The system shall transmit or distribute signals without causing objectionable cross-modulation in the cables or interfering with other electrical or electronic networks or with the reception of other television or radio receivers in the area not connected to the network.

AA. PIRATING OF SIGNALS.

It shall be unlawful for anyone to obtain any cable television service from the Franchisee with intent to cheat or defraud by installing, rearranging, or tampering with the facilities or equipment, or by any trick, stratagem, impersonation, pretension, falsification of fact or contrivance, or by any device or means whatsoever. Anyone found guilty of a violation for this section shall be guilty of a misdemeanor.

BB. ACCEPTANCE OF FRANCHISE.

This grant is made upon the express condition that the Franchisee shall file with the Franchisor a written acceptance of this Franchise, and when this Franchise shall have been accepted by the Franchisee, such Franchise and acceptance shall constitute a contract between the Franchisor and Franchisee for all the use, services and purposes set forth in this Franchise.

CC. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent 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.

DD. EFFECTIVE DATE

This Ordinance shall be in full force and take effect after its passage and publication of the Ordinance or a summary of the Ordinance as provided by law.

Passed and adopted by the City Council of Audubon this 23<sup>rd</sup> of March, 2021.

ORDINANCE NUMBER 173

AN ORDINANCE GRANTING A CABLE COMMUNICATIONS FRANCHISE TO MIDCONTINENT COMMUNICATIONS. THE FOLLOWING IS ONLY A SUMMARY, THE FULL TEXT IS AVAILABLE FOR THE PUBLIC INSPECTION AT THE CITY OFFICE IN AUDUBON, MN LOCATED AT 357 4<sup>TH</sup> STREET.

Section 1. Definitions

Section 2. Grant of Authority.

This Ordinance Summary approved for publication by the City Council of Audubon this 23<sup>rd</sup> day of March, 2021.



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## Resolution 2021-09

Resolution Approving Plans and Specifications and Ordering  
Advertisement for Bids

**WHEREAS,** pursuant to a resolution passed by the council February 8, 2021, the city engineer (consulting engineer retained for the purpose) has prepared plans and specifications for Improvement No. 2021-1, the improvement of Wren Circle with roadway, sanitary sewer, and water main improvements and water main improvements along Swan Street, and has presented such plans and specifications to the council for approval;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF AUDUBON, MINNESOTA:**

1. Such plans and specifications, a copy of which is attached hereto and made a part hereof, are hereby approved.
2. The city clerk shall prepare and cause to be inserted in the official paper an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published for 21 days, shall specify the work to be done, shall state that bids will be received by the clerk until 2:00 p.m. on April 22<sup>nd</sup>, 2021, at which time they will be publicly opened in the council chambers of the City Hall by the city clerk and engineer, will then be tabulated, and will be considered by the council at 6:30 p.m. on May 10<sup>th</sup>, 2021 in the council chambers of the city hall. Any bidder whose responsibility is questioned during consideration of the bid will be given an opportunity to address the council on the issue of responsibility. No bids will be considered unless sealed and filed with the clerk and accompanied by a cash deposit, cashier's check, bid bon or certified check payable to the clerk for 5 percent of the amount of such bid.

Adopted by the City Council of the City of Audubon on March 23, 2021.