

ORDINANCES
MILES CITY, MONTANA

ORDINANCE NO. 1144

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO CABLE & COMMUNICATIONS CORPORATION, AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS the City of Miles City, has determined that the financial, legal and technical ability of Cable & Communications Corporation, a Montana corporation, doing business as Mid-Rivers Cable Television, is reasonably sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community

BE IT ORDAINED by the City Council of the City of Miles City, Montana as follows:

SECTION I
Definition of Terms

1.1 Terms: For the purpose of this Ordinance, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular number and words in the singular number include the plural number:

- A. "Affiliate" means an entity which owns or controls, is owned or controlled by or is under common ownership with Grantee.
- B. "Basic Cable" is the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.
- C. "Cable Act" means the Cable Communications Policy Act of 1984, as amended.
- D. "Cable Service" means (i) the one-way transmission to subscribers of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection of such Video Programming or any other lawful communication service.
- E. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment or other communications equipment that is designed to provide Cable Service and other service to subscribers.
- F. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- G. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to Subscribers.

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H. "Franchising Authority" means the City of Miles City or the lawful successor, transferee, or assignee thereof.

I. "Grantee" means Cable & Communications Corporation, a Montana corporation, doing business as Mid-Rivers Cable Television, or the lawful successor, transferee, or assignee thereof.

J. "Gross Revenues" mean the monthly Basic Cable Service revenues received by Grantee from Subscribers of the Cable System plus all other revenues received directly, or indirectly, from the operation of the cable system, including, but not limited to, installation and reconnection fees, premium pay services, converter rentals, additional outlet charges, program guides, and local advertising imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

K. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

L. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing or transmitting Grantee's Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable System.

M. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.

N. "Service Tier" means a category of Cable Service or other services, provided by Grantee and for which a separate charge is made by Grantee.

O. "Subscriber" means a person or user of the Cable System who lawfully receives Cable Services or other service therefrom with Grantee's express permission.

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P. "Video Programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2
Grant of Franchise

2.1 Grant: The City hereby grants to Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services in, along, among, upon, across, above, over, under or in any manner connected with Public Ways with the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, or over, under, upon, across, or along wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the Cable System.

2.2 Term: The Franchise granted pursuant to this Ordinance shall be for an initial fifteen (15) years from the effective date of the Franchise as set forth in Section 2.3, unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

2.3 Acceptance; Effective Date: Grantee shall accept the Franchise granted pursuant hereto by signing this Ordinance and filing same with the City Clerk or other appropriate official or agency of the Franchising Authority within sixty (60) days after the passage and final adoption of this Ordinance. Subject to the acceptance by Grantee, the effective date of this Ordinance shall be the sixtieth day after its passage and final adoption.

2.4 Favored Nations: In the event the Franchising Authority enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than Grantee to enter into the Franchising Authority's streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

SECTION 3
Standards of Service

3.1 Conditions of Street Occupancy: All transmission and distribution structures, poles, other lines and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

3.2 Restoration of Public Ways: If, during the course of Grantee's construction, operation or maintenance of the Cable System, there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

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3.3 Relocation at Request of Franchising Authority: Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way or remove from the Public Way, any property of Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

3.4 Relocation at Request of Third Party: The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

3.5 Trimming of Trees and Shrubbery: The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables or other equipment. Grantee shall be permitted to charge persons who own, or are responsible for, such trees or natural growth for the cost of such trimming, provided that similar changes are assessed by and paid the utilities or the Franchising Authority for tree trimming. The Grantee shall reasonably compensate the Franchising Authority for any damages caused by such trimming in public right-of-way, or shall, at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction or operation of the system undertaken by Grantee.

3.6 Safety Requirements: Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

3.8 Aerial and Underground Construction: In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section 3.8 shall require Grantee to construct, operate and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies,

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pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section 3.8, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

Grantee shall keep complete plats and records accurately indicating the sites of its facilities and systems situated within the public ways of the Franchising Authority and keep a copy of said plat thereof on file with the Franchising Authority.

3.9 Required Extensions of Service: The Cable System, as constructed as of the date of the passage and final adoption of this Ordinance, substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least eight (8) Subscribers within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible and if it will not adversely affect the operation, financial condition or market development of the Cable System, or as provided for under Section 3.10 of this Ordinance.

3.10 Subscriber Charges for Extensions of Service: No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than eight (8) Subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1320 cable-bearing strand feet of its trunks or distribution cable and whose denominator equals eight (8) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital construction in aid of construction borne by such potential Subscribers be paid in advance.

3.11 Service to Public Buildings: The Grantee shall provide without charge one (1) outlet of the most commonly received level of service, not to include Premium Channels, to the Franchising Authority's office building(s), fire station(s), police station(s) and public school building(s) that are passed by its Cable System. The outlets of Cable Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including, but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this Section 3.11, the

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Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of Cable Service are provided to such buildings, the building owner shall pay the usual installation fees associate therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may also be required to pay the service fees associated with the provision of Cable Service and the additional outlets thereto.

3.12 Emergency Override: In the case of any emergency or disaster, the Grantee shall, upon request of the Franchising Authority, make available its facilities for the Franchising Authority to provide emergency information and instructions during the emergency or disaster period. The Franchising Authority shall hold the Grantee, its agents, employees, officers and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorney's fees and costs.

3.13 Customer Service: Grantee shall provide its customers toll free telephone access to its office or representatives. Additionally, Grantee agrees to use its best efforts to respond to customer's service complaints by 5:00pm the following business day. Nothing contained herein shall be interpreted to contradict those provisions set forth in Section 7.5.

SECTION 4

Regulation by Franchise Authority

4.1 Franchise Fee:

A. Fee: Grantee shall pay to the Franchising Authority a franchise fee equal to five (5) percent of Gross Revenues (as defined in Section 1.1 of this Franchise) received by Grantee from the operation of the Cable System on a quarterly basis; provided, however; (i) the term franchise fee includes any tax, fee or assessment of any kind imposed by Franchising Authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such; (ii) the term franchise fee does not includes any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers). For the purpose of this Section, the 12-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year, unless otherwise agreed to in writing by the Franchising Authority and Grantee. The franchise fee payment shall be due and payable thirty (30) days after the close of the preceding quarter. Each payment shall be accompanied by a brief report from a representative of Grantee showing the basis for the computation. In no event, shall the franchise fee payments required to be paid by Grantee exceed five (5) percent of Gross Revenues received by Grantee in any 12-month period.

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B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by Grantee is due. Unless within five (5) years from and after said payment due date the Franchising Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred and the Franchising Authority shall be stopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies within said five (5) years. However, no acceptance of any franchise fee payment by the Franchising Authority shall be construed as a release, waiver or as an accord and satisfaction of any claim the Franchising Authority may have for further or additional sums payable under this Franchise.

4.2 Rates and Charges: The Franchising Authority may not regulate the rates for the provision of Cable Service and other services, including, but not limited to, ancillary charges relating thereto, except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC Rules and Regulations relating thereto. Notice of any proposed rate increases shall be filed with the Franchising Authority at least 30 days in advance of the proposed effective date of any such increase.

In the event that Basic Cable Service rate increases are subject to approval of the Franchising Authority, the Grantee may, at its discretion and without consent of the Franchising Authority, increase rates relating to the provision of Basic Service by an amount which is equal to five (5) percent per year or such lesser amount to comply with applicable federal and state law.

4.3 Renewal of Franchise: The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify Grantee of its preliminary assessments regarding the identify of future cable-related community needs and interests, as well as, the past performance of Grantee under the then current Franchise term. The Franchising Authority further agrees that such preliminary assessment shall be provided to the Grantee prior to the time that the four (4) month period referred to in Subsection (c) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this Section 4.3, the Grantee and Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act. A reproduction of Section 626 of the Cable Act as such existed as of the effective date of the Cable Act is attached hereto as Schedule 1 and incorporated herein by this reference.

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4.4 Condition of Sale: Subject to applicable federal, state and local law, if a renewal of Grantee's Franchise is denied and the Franchising Authority either lawfully acquires ownership of the Cable System or effects the transfer of ownership of the Cable System to another person, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the Franchise itself, or if the Franchise is lawfully revoked for cause and the Franchising Authority acquires ownership of the Cable System or effects the transfer of ownership of the Cable System to another person, any such acquisition or transfer shall be at an equitable price.

4.5 Transfer of Franchise: Grantee's right, title or interest in the Franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an Affiliate, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for the transfer in trust, by mortgage, by other hypothecation or by assignment of any rights, title or interest on Grantee in the Franchise or Cable System in order to secure indebtedness.

SECTION 5

Compliance and Monitoring

5.1 Testing for Compliance: The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operation of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate and that the results thereof shall be made available to the Grantee upon Grantee's request.

5.2 Books and Records: The Grantee agrees that the Franchising Authority may review such of its books and records, during normal business hours and on a nondisruptive basis, as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonable deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by Grantee to it as confidential and only to disclose it to employees, representatives and agents thereof that have a need to know or in order to enforce the provisions hereof.

SECTION 6

Insurance, Indemnification and Bonds or Other Surety

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6.1 Insurance Requirements: Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. Said insurance shall designate the Franchising Authority as an additional insured. Such insurance shall be noncancelable except upon thirty (30) days prior written notice to the Franchising Authority. Grantee agrees to provide the Franchising Authority with a "Certificate of Insurance" listing the Franchising Authority as an additional insured party.

6.2 Indemnification: The Grantee agrees to indemnify, save and hold harmless and defend the Franchising Authority, its officers, boards, agents and employees from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs.

6.3 Bonds and Other Surety: Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Cable Services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore. The Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000, conditioned upon the substantial performance of the material terms, covenants and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the Grantee's legal, financial or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith. If a bond is required, Grantee may provide other surety of guarantee reasonably acceptable to the Franchising Authority in lieu of bond.

SECTION 7

Enforcement and Termination of Franchise

7.1 Notice of Violation: In the event the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance or default. Further, if the Franchising Authority believes that Grantee has become insolvent or is in bankruptcy, (also events of defaults), the Franchising Authority shall give written notice thereof to Grantee.

7.2 Grantee's Right to Cure and Respond: Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1; (a) to respond to the Franchising Authority contesting the assertion of noncompliance, or (b) to cure

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such default, or (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing: In the event that Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within sixty (60) days after the Grantee is notified of the alleged default pursuant to Section 7.1, the Franchising Authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduling meeting of the Franchising Authority which is scheduled at a time which is no less than give (5) business days therefrom. The Franchising Authority shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

7.4 Enforcement: Subject to applicable federal, state and local law, in the event the Franchising Authority, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Franchising Authority may, in addition to all other remedies it has under applicable law:

- A. Foreclose on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;
- B. Commence an action at law for monetary damages or seek other equitable relief;
- C. In the case of a substantial default of a material provision of the Franchise, or the Grantee is in bankruptcy proceedings or insolvent, declare the Franchise Agreement to be revoked; or
- D. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

None of the above remedies shall be deemed exclusive.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the Franchising Authority to enforce prompt compliance.

7.5 Acts of God: The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

SECTION 8

Unauthorized Reception

8.1 Misdemeanor: It shall be a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the

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Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any person to tamper with, remove or injure any property, equipment or part of the Cable System or use any unauthorized means of receiving Cable Service or other services provided thereto. Subject to applicable federal and state law, the Franchising Authority shall enforce criminal misdemeanor law which will enforce the intent of this Section 8.1. In the absence of applicable federal and state laws, the Franchising Authority shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law which will enforce the intent of this Section 8.1.

SECTION 9

Miscellaneous Provisions

9.1 Documents Incorporated and Made a Part Hereof: The following documents shall be incorporated herein by this reference, and in the case of a conflict or ambiguity between or among them, the document of latest date shall govern:

- A. Any enabling ordinance in existence as of the date hereof; and,
- B. Any proposal submitted by Grantee pursuant to a franchise renewal procedure, as amended and supplemented during the franchise renewal negotiation process;
- C. Any franchise agreement between Grantee and Franchising Authority reflecting the renewal of the Franchise, if any.

9.2 Preemption: If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the Franchising Authority, the jurisdiction of the Franchising Authority shall be superseded regarding the matter in question.

9.3 Actions of Franchising Authority: In any action by the Franchising Authority or representative thereto mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

9.4 Notice: Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U. S. Postal Service.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Miles City
Attn: Mayor
P.O. Box 910
Miles City, Montana 59301

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The notices or responses to the Grantee shall be addressed as follows:

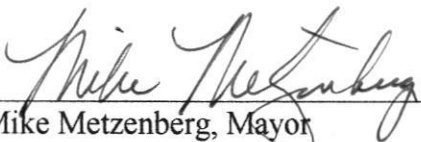
Cable & Communications Corporation
P.O. Box 280
Circle, Montana 59215

Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

9.5 Descriptive Headings: The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

9.6 Severability: If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision thereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SAID ORDINANCE READ AND PUT UPON ITS PASSAGE THIS
12th **DAY OF AUGUST, 2003.**

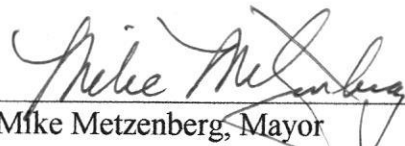

Mike Metzberg, Mayor

ATTEST:

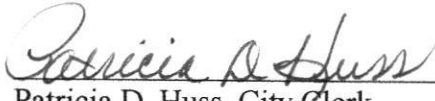

Patricia D. Huss, City Clerk

**SAID ORDINANCE PASSED AND APPROVED BY A DULY
CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF
MILES CITY, MONTANA, THIS 26th DAY OF AUGUST, 2003 BY
THE FOLLOWING VOTE.**

AYES:	<u>7</u>
NOES:	<u>0</u>
ABSENT:	<u>1</u>


Mike Metzberg, Mayor

ATTEST:


Patricia D. Huss, City Clerk

Accepted by:

ORDINANCES
MILES CITY, MONTANA

CABLE & COMMUNICATIONS
CORPORATION, a Montana
corporation,
Subject to applicable federal, state
and local Law

By: Craig Johnson
President

Date: September 2, 2003

ATTEST:

[Signature]
Corporate Secretary