

CITY OF HINCKLEY, MINNESOTA  
CABLE COMMUNICATIONS FRANCHISE ORDINANCE  
ORDINANCE NO. 02-2025

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AN ORDINANCE CREATING AND AWARDING A CABLE  
COMMUNICATIONS FRANCHISE IN HINCKLEY, MINNESOTA AND RULES  
GOVERNING THE OPERATION OF SAME.

SECTION 1. DEFINITIONS.

- 1) "Franchisee" is Savage Communications/dba SCI Broadband.
- 2) "City" is the City of Hinckley, Minnesota.
- 3) "FCC" is the Federal Communications Commission of the United States.
- 4) "Franchise" means the rights and obligations extended to Franchisee to own, operate and maintain a cable communications system within the boundaries of the City of Hinckley and manifested by this Franchise Ordinance.
- 5) "Class IV Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.
- 6) "Non-voice return communications" means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.
- 7) "System" means a system of antennas, cables, wires, lines, towers, waveguides or other conductors, converters, equipment or facilities located in City, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronic or electrical signals. Said definition shall not include any system wholly internal to one or more multiple unit dwellings under common ownership, control or management, and which does not use City streets or public property.
- 8) The words "shall" and "must" are mandatory.
- 9) The word "may" is permissive.
- 10) The words "may not" are unconditionally prohibitive.

## SECTION 2. GRANT OF AUTHORITY

The City Council of Hinckley, Minnesota, hereby grants a cable communications franchise pursuant to the terms and conditions contained herein for the installation, repair, replacement, reconstruction, upgrade, and operation and maintenance of a system within the City limits of Hinckley, Minnesota.

## SECTION 3. PUBLICATION FEE

Franchisee shall reimburse City for all costs of publishing this franchise ordinance.

## SECTION 4. AUTHORITY FOR USE OF STREETS

A. For the purposes of operating and maintaining a System in the City, Franchisee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the street within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

B. Franchisee shall construct and maintain the System so as not to interfere with other uses of streets. Franchisee shall make use of existing poles and other facilities available to Franchisee.

C. Notwithstanding the above grant to use streets, no street shall be used by Franchisee if the City determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used.

## SECTION 5. INCORPORATION BY REFERENCE

All terms, provisions, statutes, regulations or documents incorporated by reference are a part of this Franchise.

## SECTION 6. AGREEMENT

Franchisee agrees to be bound by all the terms and conditions of this Franchise.

## SECTION 7. POLICE POWERS

A. Franchisee's rights are subject to the police powers of City to adopt and enforce ordinances necessary to the health, safety and welfare of the public.

B. In the event of any conflict between the provisions of this Franchise and any other present or future lawful exercise of police powers of City the Franchise shall prevail.

## SECTION 8. WRITTEN NOTICE

All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Franchisee or City Administrator of City or when seventy-two (72) hours have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to which notice is being given, as follows:

If to City:	City Administrator Hinckley City Hall 106 -1st Street SE PO Box 366 Hinckley, Minnesota 55037
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If to Franchisee:	Savage Communications 115 Weber Ave P.O. Box 810 Hinckley, MN 55037
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Such addresses may be changed by either party upon notice to the other party given as provided in this section.

## SECTION 9. 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.

#### SECTION 10. FRANCHISE TERM.

This Franchise shall have a term of fifteen (15) years, effective from written acceptance by the Franchisee.

#### SECTION 11. REVIEW OF FRANCHISE TERMS.

The field of cable communications is rapidly changing and will likely see regulatory, technical, financial, marketing and legal changes during the terms of the franchise period. Accordingly, the following provisions shall apply during the franchise term:

A. The City and the Franchisee may hold scheduled review sessions within thirty (30) days of the third anniversary date of the franchise granted hereunder and within thirty (30) days of every third anniversary date thereafter or whenever City and Franchisee shall so agree. All such review sessions shall be open to the public and shall be announced in the City's official newspapers at least ten (10) days before each session. At a minimum, one (1) review session shall be held no less than one (1) year prior to the expiration of this Franchise.

B. Special review sessions may be held at any time during the term of the franchise, provided that the City and the Franchisee shall mutually agree on the time, place and the topics to be reviewed. All such review sessions shall be open to the public and shall be announced in the City's official newspapers at least ten (10) days before each session.

#### SECTION 12. FRANCHISE EXCLUSIVITY.

This Franchise is non-exclusive.



SECTION 13. SALE OR TRANSFER OF THE FRANCHISE. SALE OR TRANSFER OF STOCK.

Sale or transfer of this Franchise or sale or transfer of stock so as to create a new controlling interest is prohibited except at the approval of the City which approval shall not be unreasonably withheld.

Notwithstanding, Franchisee may pledge or mortgage this Franchise to a lending institution, group of investors, or other financial entity to obtain funds required for the initial construction and completion of the cable system.

SECTION 14. ACCESS TO FINANCIAL RECORDS.

The City is granted the authority to audit the Franchisee's accounting and financial records upon reasonable notice. The Franchisee shall file annually with the City reports of gross subscriber revenues and other information, as the City deems appropriate.

SECTION 15. FREE SERVICE TO INSTITUTIONS

Free drops of Basic and Satellite service will be connected to the following Hinckley locations:

Hinckley High School  
Hinckley Elementary School  
Hinckley Fire Station  
Hinckley Liquor Store  
Hinckley City Hall and Library

\*There will be no charge for the use of converters or monthly service at these locations.

SECTION 16. RESIDENTIAL SUBSCRIBER CONTRACTS

Franchisee will keep on file with City any monthly subscriber service contract regularly employed by Franchisee.

SECTION 17. RATE REGULATION

The City may regulate Franchisee's rates and changes to the extent permitted in accordance with applicable local, state and federal laws and regulations.

#### SECTION 18. FRANCHISE ADMINISTRATOR

The City Clerk/Administrator of Hinckley, Minnesota shall be responsible for the continuing administration of this franchise.

#### SECTION 19. LIABILITY INSURANCE

The Franchisee shall indemnify and hold harmless the City at all times during the term of the Franchise.

Franchisee shall at all times keep in effect the following types of insurance coverage:

A. Worker's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City in the statutory amount;

B. Property damage liability insurance to the extent of one million dollars (\$1,000,000.00) as to any one accident, and personal injury liability insurance to the extent of one million dollars (\$1,000,000.00) as to any one person and one million dollars (\$1,000,000.00) as to any one accident.

Said insurance 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 this Franchise.

#### SECTION 20. SECURITY FUND AND PENALTY

A. Upon grant of this Franchise by City and acceptance by Franchisee, Franchisee shall deposit and maintain in a bank account in the name of the City, the sum of one Thousand and No/100 Dollars (\$1,000.00) as security for the faithful performance by it of all the provisions of this Franchise, and compliance with all orders, permits and directions of City and the payment by Franchisee of any claim, liens and taxes due City which arise by reason of the construction, operation or maintenance of System. Interest accrued on this deposit shall be returned to Franchisee if no penalties have been assessed. Provision shall be made to permit the Administrator designated in this Franchise to

withdraw funds from the security fund. Franchisee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any other purpose. Franchisee shall receive thirty (30) days written notice to correct any problem or institute an appeal before any funds can be withdrawn from this account.

B. Within thirty (30) days after notice to it that any amount has been withdrawn by City from the security fund pursuant to paragraph A of this section, Franchisee shall deposit a sum of money sufficient to restore such security fund to the original amount.

C. If Franchisee fails, after ten (10) days' notice, to pay to City any taxes due and unpaid; or, fails to repay to City, within such ten (10) days, any damages, costs or expenses which Franchisee or City shall be compelled to pay by reason of any act or default of the Franchisee in connection with the Franchise; or fails, after thirty (30) days' notice of such failure by City to comply with any provision of the Franchise which City reasonably determines can be remedied by an expenditure of the security, City may immediately withdraw the amount thereof, with interest and any consequential damages, from the security fund. Upon such withdrawal, City shall notify Franchisee of the amount and date thereof.

D. In addition to recovery of any monies owed by the Franchisee to the City or damages to the City as a result of any acts or omissions by the Franchisee pursuant to the Franchise, the City in its sole discretion may charge to and collect from the Security Fund the following penalties:

1. For failure to provide data, documents, reports or information or to cooperate with City during an application process or System review, the penalty shall be Twenty-Five and No/100 Dollars (\$25.00) per day for each day, or part thereof, such failure occurs or continues.

2. For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this section, the penalty shall be Twenty-Five and No/100 Dollars (\$25.00) per day for each day, or part thereof, such failure occurs or continues.

3. For failure to test, analyze and report on the performance of the System following a request by the City, the penalty shall be Fifty and No/100 Dollars (\$25.00) per day for each day, or part thereof, such failure occurs or continues.

4. Thirty (30) days following notice from City of a failure of Franchisee to comply with construction, operation or maintenance standards the penalty shall be Fifty and No/100 Dollars (\$50.00) per day for each day, or part thereof, such failure occurs or continues.

E. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

F. Exclusive of the penalties set out above in this section, a violation of any provision of the Franchise is a petty misdemeanor.

G. Whenever the City Council determines that the Franchisee has violated one or more terms, conditions or provisions of the Franchise, a written notice shall be given to the Franchisee informing it of such violation. At any time after five (5) days following notice, City may draw from the Letter of Credit all damages and other monies due City.

H. Whenever a penalty has been imposed, the Franchisee may, within ten (10) days of notice, notify City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Franchisee to City shall specify with particularity the matters disputed by the Franchisee.

1. City shall hear the Franchisee's dispute at the next regularly scheduled Council meeting. City shall supplement the Council decision with written findings of fact.

2. Upon a determination by City that no violation has taken place, City shall refund to the Franchisee without interest all monies drawn from the Letter of Credit by reason of the alleged violation.

I. If the Letter of Credit, or any subsequent Letter of Credit delivered, expires prior to fifteen (15) months after the expiration of the term of the Franchise, adequate assurance shall be provided to City that it shall be renewed or replaced during the terms of the Franchise to provide that it will not expire earlier than fifteen (15) months after the expiration of the Franchise. The renewal or replaced Letter of Credit shall be on the same form and with a bank authorized herein and for the full amount stated in this section.

J. If the City draws upon the Letter of Credit, or any subsequent Letter of Credit, in whole or in part, the Franchisee shall replace the same within ten (10) days and shall deliver to the City a like replacement Letter of Credit for the full amount stated in this section as a substitution of the previous Letter of Credit.

K. If any Letter of Credit is not so replaced, City may draw on the Letter of Credit for the whole amount thereof and hold the proceeds, without interest, and use the proceeds for any or all of the obligations, duties and responsibilities of the Franchisee under the Franchise that are not performed or paid for by the Franchisee including attorneys' fees incurred by City in so performing and paying. The failure to so replace any Letter of Credit may also, at the option of City, be deemed a default by the Franchisee under the Franchise. The drawing on the Letter of Credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of the Franchisee which are in default, shall not be a waiver or release of such default.

L. The collection by City of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the Letter of Credit, be deemed a waiver of any right of City pursuant to the Franchise or otherwise.

#### SECTION 21. 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.

#### SECTION 22. 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 proceeding which afforded reasonable notice and a reasonable opportunity to be heard.

#### SECTION 23. CHANNEL CAPACITY

The Franchisee shall construct a cable system with a minimum capacity of 550 MHz of bandwidth capable of providing a minimum of 70 video or (300 digital QAM) programmed channels.

#### SECTION 24. PERMITS

Within 90 days of the granting of the Franchise, the Franchisee shall apply for any necessary permits, licenses, certificates and authorizations. The requirement of this provision may be waived by City only upon occurrence of unforeseen events or acts of God.

The services provided by the Franchisee shall be made available to all points within the corporate limits of the City of Hinckley as they may be established during the term of this Franchise, and in areas outside the corporate limits at the discretion of the Franchisee.

During the Franchise term the Franchisee may render service to customers outside the city limits of Hinckley upon receipt of any required authorization from the appropriate local authority, if any.

#### SECTION 25. AUTHORIZATION TO COMMENCE CONSTRUCTION OR REBUILD.

The Franchisee shall obtain a permit from the proper municipal authority before commencing construction, reconstruction, or rebuild of the System of any communications system, including the opening or disturbance of any street, sidewalk, driveway or public place. If the Franchisee fails to meet the conditions of the permit, City, after reasonable notice to Franchisee, and Franchisee has had an opportunity to remedy said complaint, can cause said problem to be remedied and the Franchisee shall pay for the actual costs involved.

#### SECTION 26. NOTICE OF PROPERTY OWNER REQUIRED

No cable, line, wire, amplifier, converter or other piece of equipment owned by Franchisee shall be installed by Franchisee without first providing notice to the owner or his designee of any property involved.

#### SECTION 27. WORK PERFORMED BY OTHERS

A. Franchisee shall give notice to City specifying the names and addresses of any other entity, other than Franchisee, which performs services pursuant to this Franchise, provided, however, that all provisions of this Franchise remain the responsibility of Franchisee.

B. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise.

#### SECTION 28. 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.

#### SECTION 29. RELOCATION OF WIRES ETC.

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 said street, right-of-way or public place whenever the City undertakes public improvements which affect the cable equipment.

In the event that a change is made in the grade, width or location of public streets, alleys, avenues, rights-of-way or other public places by authority of the City which shall necessitate the removal of any poles, wires, transmission and distribution lines to conform to the change of grade, Franchisee shall make necessary changes in its equipment at its own expense, upon reasonable notice from the City Council or its designated official.

#### SECTION 30. REPAIR OF STREETS

Any and all streets which are disturbed or damaged during the construction, operation, maintenance or reconstruction of the System shall be restored to the same condition by Franchisee at its expense.

#### SECTION 31. ERECTION OF POLES PROHIBITED

Franchisee shall not erect, for any reason, any pole on or along any street in an existing aerial utility system. If additional poles in an existing aerial route are required, Franchisee shall negotiate with the utility for the installation of the needed poles. Any such additional poles shall require the advance written approval of City. Franchisee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions. City shall utilize its best offices to assist in arriving at an equitable pole rental agreement.



## SECTION 32. RESERVATIONS OF STREET RIGHTS

The following reservations in the use or construction of streets shall be complied with by Franchisee notwithstanding the grant to use streets made by the Franchise:

A. Nothing in this Franchise shall be construed to prevent City from constructing sewers, grading, paving, repairing and/or altering any street, or laying down, repairing or removing water mains or constructing or establishing any other public work. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Franchisee. If any such property of Franchisee herein shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, forty-five (45) days' notice shall be given to Franchisee by City and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Franchisee in such manner as shall be directed by the City so that the same shall not interfere with the said public work of the City, and such removal or replacement shall be at the expense of Franchisee herein.

B. Franchisee shall construct and maintain the System so as not to interfere with other uses of utility company property or public property. Franchisee shall make use of existing poles and other facilities which may be available to Franchisee.

C. Notwithstanding the grant to use streets, no street shall be used by Franchisee if the City in its sole opinion determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used.

D. If the City shall make improvements or changes on all or any part of streets, over, under or along which any part of the System has been installed, then and in every case the Franchisee shall, after thirty (30) days' notice from the City or its authorized agents,

proceed to alter, change, vacate or remove from the right-of-way or easement any part of the System necessary to conform with said City improvements or changes without cost whatsoever to the City.

E. All construction or use of streets shall be in conformance to the then applicable ordinances of City.

### SECTION 33. TRIMMING OF TREES

Franchisee may cut or trim trees as necessary pursuant to prior notice to the owner of property which is adjacent to the street area in which such tree stands.

### SECTION 34. STREET VACATION OR ABANDONMENT

In the event any Street shall be vacated by City or the use thereof discontinued by Franchisee, during the term of this Franchise, Franchisee shall forthwith remove its facilities therefrom unless specifically permitted to continue the same, and upon the removal thereof restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as reasonably required by City. In the event of failure, neglect or refusal of Franchisee, after thirty (30) days' notice by City to repair, improve or maintain such street portion, City may do such work or cause it to be done, and the cost thereof as found and declared by City shall be paid by Franchisee as directed by City and collection may be made by court action or otherwise.

### SECTION 35. TECHNICAL STANDARDS

The rules of the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations are incorporated herein by reference. The results of any tests required by the Federal Communications Commission shall be filed with the City upon request.

## SECTION 36. SPECIAL TESTING

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 additional tests will be made on the basis of complaints received or other evidence indicating a significant unresolved controversy or significant non compliance. Such tests will be limited to the particular matter in controversy. In the event that special testing is required by the City to determine the source of technical difficulties, the cost of said testing shall be borne by the Franchisee.

## SECTION 37. NON-VOICE RETURN CAPABILITY

The Franchisee shall construct and maintain a System having the technical capacity for non-voice return communications.

## SECTION 3. 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 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 of classification of Class IV cable communications activity planned for the purpose.

- A. 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 to the company and its employees for internal business use, or to the subscriber subject of that information, unless the company has received specific written authorization from the subscriber to make the data available.

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

#### SECTION 39. SUBSCRIBER COMPLAINTS

All complaints by the City, subscribers, or other citizens regarding the quality of service, equipment malfunctions, billing disputes, and any other matters relative to the cable communications system shall be investigated and resolved by the Franchisee. In the event of numerous or repeated instances of similar subscriber complaints the City Council may choose to hold a public hearing on the subject.

#### SECTION 40. REPAIRS AND COMPLAINTS

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, adjustments and installations shall be borne by the subscriber, unless it is determined that the cable system is at fault.

The Franchisee shall be relieved of its obligation to provide 24 hours response in the event of acts of God including floods, fire and severe storms.

Franchisee may interrupt system service between 1:00 A.M. and 7:00 A.M. for routine testing, maintenance and minor repairs, without notification. Interruption of service at any other time shall be only for good cause after reasonable notice to subscribers and be for the shortest practical time.

#### SECTION 41. OPEN BOOKS AND RECORDS

City shall have the right to inspect, upon seventy-two (72) hour notice during normal business hours, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results, record of requests for service and other like materials of Franchisee which relate to the operation of this Franchise.

#### SECTION 42. TERMINATION

The City shall have the right to terminate and cancel the Franchise and all rights and privileges of the Franchise if the Franchisee violates any provision of the Franchise, attempts to evade any of the provisions of the Franchise or practices any fraud or deceit upon the City. The City shall provide the Franchisee with a written notice of the cause for termination and its intention to terminate the Franchise and shall allow the Franchisee a minimum of thirty days after service of the notice in which to correct the violation. The Franchisee shall be provided with an opportunity to be heard at a public hearing before the City Council prior to the termination of the Franchise.

#### SECTION 43. FORECLOSURE

Upon the foreclosure or other judicial sale of the System, Franchisee shall notify City of such fact and such notification shall be treated as a notification that a change in control of Franchisee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

#### SECTION 44. RECEIVERSHIP

City shall have the right to cancel this Franchise one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such

receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

A. Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,

B. Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

#### SECTION 45. ABANDONMENT

The Franchisee may not abandon any portion of the cable system provided hereunder without having given three (3) months prior written notice to the City. The Franchisee may not abandon the cable system or any portion thereof without compensating the City for damages resulting to it from such abandonment.

#### SECTION 46. REMOVAL OF CABLE EQUIPMENT UPON TERMINATION 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 Franchising authority so requests. In the event Franchisee has not removed said cable, wires and appliances within 120 days of the date of termination or forfeiture, City shall have the option of purchasing said property.

#### SECTION 47. MUNICIPALRIGHT TO ~~OPURCHASE~~ SYSTEM UPON SALE OF SYSTEM

A. If the Franchise or cable system is offered for sale, the Franchising authority shall have the right to purchase the system at fair market value.

B. Procedures. In the event City elects to exercise its right to purchase the System as provided in this section, the following shall then apply:

1. City and Franchisee shall negotiate all other terms and conditions of the purchase of the System.

2. If City and Franchisee cannot agree upon the terms and conditions of the purchase, City or Franchisee shall have the right to proceed to arbitration. Arbitration shall commence and proceed according to applicable Minnesota law except as follows:

a. The parties shall, within fifteen (15) days of the decision to proceed to arbitration, appoint one (1) arbitrator each who is experienced and knowledgeable in the purchase and valuation of business property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within fifteen (15) days after appointment of second arbitrator.

b. Within thirty (30) days after appointment of all arbitrators and upon ten (10) days written notice to parties, the arbitrators shall commence a hearing on the terms and conditions of the purchase in dispute.

c. The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debates and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn.

d. The arbitration panel shall be required to determine the purchase price of the system according to the standards established in paragraph 3 below.

e. At the close of the hearings and within thirty (30) days, the arbitrators shall prepare written findings and make a written decision agreed upon by a majority of the arbitrators which shall be served by mail upon City and Franchisee.

f. The decision of a majority of the arbitrators shall be binding upon both parties except that City may, in its sole discretion and without any penalty or cost to City of any kind, withdraw its offer to purchase within sixty (60) days of receipt of the final decision of a majority of the arbitrators.

g. Either party may seek judicial relief to the extent authorized under Minnesota Statutes § 572.09 and § 572.19 as the same may be amended, and, in addition, under the following circumstances:

- 1) A party fails to select an arbitrator;
- 2) The arbitrators fail to select a third arbitrator;
- 3) One (1) or more arbitrator is unqualified;
- 4) Designated time limits have been exceeded;
- 5) The arbitrators have not proceeded expeditiously; or
- 6) Based upon the record, the arbitrators abused their discretion.

h. In the event a court of competent jurisdiction determines the arbitrators have abused their discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suits to be awarded to the prevailing party.

1. Cost of arbitration shall be borne equally.

3. The purchase price of the System to be paid by City shall be the fair market value of the System including both tangible and intangible assets. For purposes of this section, this Franchise and rights derived therefrom shall not constitute intangible assets.

4. Franchisee expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.

5. The date of valuation shall be no later than the date City makes a written offer for the System.



SECTION 48. PURCHASE BY CITY UPON TERMINATION OF FRANCHISE OR EXPIRATION OF FRANCHISE TERM

A. The City may, in lawful manner upon the payment of fair valuation, lawfully ascertain, purchase, condemn, acquire, take over and hold the property and plant of the Franchisee in whole or in part in the following circumstances:

1. If such purchase or taking over were at the expiration of the Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

2. In the event City shall terminate the Franchise pursuant to the provisions of Section 44 of this Franchise it shall reimburse Franchisee for the fair market value of the system, exclusive of the value attributable to the Franchise itself.

B. In the event of any dispute, the arbitration procedures in Section 49 of this Franchise ordinance shall be followed.

SECTION 49. ACCESS CHANNELS

A. 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 specially designated access channel. The specially designated access channel may be used by the general public, local educational authorities and local government on a first-come, first-served, non-discriminatory basis. During those hours that the specially designated access channel is not being used by the general public, local educational authorities and local government, the Franchisee shall lease time to commercial or noncommercial users on a first-come, first served, non-discriminatory basis if the demand for that time arises. The Franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by the general public, local

educational authorities, local government, or commercial or non-commercial users who have leased time. ~~The VHF spectrum (Channels 2-13) must be used for the specially designated access channel.~~

B. The Franchisee shall establish rules for the administration of the specially designated access channel. The operating rules governing the specially designated access channel shall be filed by the Franchisee with the City within 90 days after any access channel is put into use.

#### SECTION 50. FRANCHISE FEE

During the term of this Franchise, Franchisee shall pay to the City annually an amount equal to three percent (3%) of all Basic Cable Service revenue derived from subscribers within the City of Hinckley within thirty (30) days after December 31 of each year. Service revenue shall not include monies received as installation charges and charges and fees for reconnections, inspections, repairs or modification of any installation.

#### SECTION 51. DISCRIMINATORY PRACTICES PROHIBITED

Franchisee shall not deny service, deny access, or otherwise discriminate against subscribers, programmers or general citizens on the basis of race, color, religion, national origin, sex or age. Franchisee shall comply at all times with all other applicable, federal, state and city laws, and all executive and administrative orders relating to nondiscrimination.

#### SECTION 52. CABLE TAPPING PROHIBITED

Neither Franchisee nor any other person, agency or entity shall tap, or arrange for the tapping, of any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever.

#### SECTION 53. RECOURSE AGAINST CITY LIMITED

Franchisees' recourse arising out of any provision or requirement of the Franchise or the enforcement of the Franchise shall be limited as provided in 47 U.S.C. § 555a.

#### SECTION 54. NONENFORCEMENT BY CITY

Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance.

#### SECTION 55. COURT DECISIONS AND SEVERABILITY

In the event any material provision of this Franchise is held by a Court of Law to be invalid or preempted by federal or state laws, rules or regulations, the City and Franchisee shall enter into good faith negotiations to modify the Franchise to conform with such requirements.

#### SECTION 56. INTERNET SERVICES

Notwithstanding anything to the contrary in this franchise, the Franchisee may, but need not, construct and use the system and the authority granted in Section 2 and elsewhere in this Franchise for the purpose of providing access to and use of electronic mail or other communications services, information services and compilations, the "Internet" and "interactive computer services" (as such terms are defined by 47 U.S.C. § 23), and any other similar service, compilation, or electronically accessible data. The provision of these services shall not be subject to the other provisions of this Franchise and shall be subject only to compliance with applicable federal and state laws, rules, and regulations and further compliance with the terms of any agreement with the user of such services, which agreement shall be upon such terms and conditions as are agreed to in the sole discretion of the Grantee and such user provided, however, that the Grantee's construction and maintenance of any wires, cables, or other physical improvements located on any street, right-of-way or other property of the City for the purpose of providing such services shall be subject to applicable standards for use of such property.

Without limitation of any other right to which the Grantee is entitled under federal or state law, under this Franchise, or otherwise, and without regard to the venue in which any action is or may

be brought, the Grantee shall be entitled to every protection, immunity, and limitation on liability offered by 47 U.S.C. § 230(b)-(c).

SECTION 57. GENERAL PROVISION ON RIGHTS AND REMEDIES

A. All rights and remedies specifically given to City or Franchisee by this Franchise shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to City or Franchisee at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City or Franchisee and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time to thereafter any other right or remedy. No delay or omission of City or Franchisee in the exercise of any right or remedy shall impair any such right or remedy, nor shall any such delay or omission be construed to be a waiver of any right or remedy or acquiescence to any default. The exercise of any such right or remedy by City or Franchisee shall not release any other party from its obligations or any liability under this Franchise.

B. In addition to all other remedies granted or available to City and Franchisee, City shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, by any other party of any terms or provisions of this Franchise, or to a decree compelling performance by any other party of any term or provision of this Franchise.

C. Franchisee agrees that it will not, at any time, set up against City in any claim or proceeding, any condition or term of this Franchise as unreasonable, arbitrary, void or that City had not power or authority to make such term or condition, but shall be required to accept the validity of the terms and conditions of this Franchise.

D. In case of any dispute or question as to the meaning, interpretation or application of any term, provision or condition of this Franchise, City and Franchisee shall resolve such dispute or question.

E. City reserves the right to delegate and redelegate from time to time, any of its rights or obligations under this Franchise to any governmental body or governmental organization as determined by City. Any delegation by City shall be effective upon written notice by City to Franchisee of such delegation. Upon receipt of notice by Franchisee of City's delegation, Franchisee shall be bound by all terms and conditions of the delegation not in conflict with this Franchise. Any such delegation, revocation or redelegation, no matter how often made, shall not be deemed an amendment to this Franchise nor require any consent of Franchisee.

Passed by the Hinckley City Council the \_\_\_\_\_ Day of, \_\_\_\_\_ 2025.

Mayor \_\_\_\_\_

Clerk \_\_\_\_\_

Date \_\_\_\_\_

SAVAGE COMMUNICATIONS, INC  
A MINNESOTA CORPORATION

By: \_\_\_\_\_

Its: President

Effective: Date \_\_\_\_\_

## Summary Ordinance for Publication

The City Council of the City of Hinckley adopted Ordinance 02-2025, Cable Communications Franchise Ordinance, which replaces Ordinance 596, Cable Communications Franchise Ordinance. This ordinance supersedes the previous cable communications franchise ordinance. A copy of the full ordinance is available for public inspection at City Hall.

ATTEST:

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Leaha Jackson, City Administrator

Date of Publication: