

**ORDINANCE #65431**  
**Board Bill No. 77**  
**Floor Substitute**

An ordinance relating to certain television systems; repealing Ordinance 58462, as amended by Ordinance 64773, and Ordinance 64773; with definitions of terms; providing for the granting of franchises to construct, operate and maintain cable television systems within the City of St. Louis; providing procedures for the award of cable television franchises, and prescribing certain terms and conditions of such franchises; providing methods and standards for the regulation, operation and maintenance of cable television systems pursuant to franchises; providing penalties for violations; and regulating open video systems.

**WHEREAS**, the City’s cable television regulatory ordinances date from the early 1980s; and

**WHEREAS**, the technology of cable television and other forms of video delivery to consumers has changed; and

**WHEREAS**, federal law regarding cable franchises has changed since the adoption of the City’s cable television regulatory ordinances; and

**WHEREAS**, it is in the best interests of the City and of its residents to adopt new regulations of certain television systems; and

**BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:**

**SECTION ONE. Short title, code inclusion, and repealer.**

A. This Ordinance shall be made a part of the Revised Code of the City of St. Louis, and the sections of this Ordinance may be renumbered for such purpose.

B. Ordinance 58462 as amended by Ordinance 64773, and Ordinance 64773, are hereby repealed.

**SECTION TWO. Definitions and Rules of Construction.**

A. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein, unless the context clearly indicates that another meaning is intended.

1. **“Access”** refers to the availability of channels or capacity on the cable system for non-commercial use by certain agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, for distribution of video programming or other programming services, including but not limited to the following types of Access.
  - a. **“Community Access”** means PEG Access in which an independent non-profit organization is the primary user and exercises editorial control over non-commercial programming content and other non-commercial services, developed on a non-commercial basis in conjunction with the local community and generally not subject to editorial control by the City, a Grantee, or other parties, except to the extent permitted under applicable law.
  - b. **“Educational Access”** means Access in which Schools are the primary users and exercise editorial control over non-commercial programming content and other non-commercial services.
  - c. **“Government Access”** means Access in which City governmental institutions or their designees are the primary users and exercise editorial control over non-commercial programming content and other non-commercial services.
  - d. **“PEG Access”** means Public, Educational, and Governmental Access collectively, as that term is commonly used in federal and local law, and over which a Grantee shall not exercise editorial control, except to the extent allowed by applicable law.
  - e. **“Public Access”** means Access in which individual members of the general public, community-based

groups, and other organizations are the primary users on a non-commercial, non-discriminatory basis, and content of programming is generally not subject to editorial control by the City, a Grantee, or other parties, except to the extent permitted under applicable law.

2. “**Access Channel**” means any channel, or portion thereof, designated for PEG Access purposes, or otherwise made available to transmit PEG Access programming or services.
3. “**Affiliate**” of a Person means any Person that owns or controls, is owned or controlled by, or is under common ownership or control with, that Person.
4. “**Agency**”: see “Franchise Agency”.
5. “**Agreement**”: see “Franchise Agreement”.
6. “**Application**”: see “Franchise Application”
7. “**Board of Aldermen**” means the City’s Board of Aldermen, created by Article IV of the City’s Charter as amended.
8. “**Board of Public Service**” means the City’s Board of Public Service as constituted pursuant to the City’s Charter.
9. “**Broadcast Signal**” means a federally licensed television signal transmitted over the air to a wide geographic audience.
10. “**Cable Act**” means Title 47 of the United States Code, Title VI, 47 U.S.C. § 521 *et seq.*, as amended from time to time.
11. “**Cable Operator**” means any Person or group of Persons (A) who provides cable service over a Cable System and directly or through one or more Affiliates owns a significant interest in a substantial portion of such Cable System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.
12. “**Cable Service**” means (1) the one-way transmission to Subscribers of video programming or other programming service; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
13. “**Cable System**” means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Rights-of-Way and without connecting to a facility that uses any Public Rights-of-Way in the City; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent that such facility is used in the transmission of video programming directly to Subscribers; (4) an Open Video System that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system. The foregoing definition of “Cable System” shall not be deemed to circumscribe or limit the valid authority of the City to regulate or franchise the activities of any other communications system or provider of communications services to the full extent permitted by law.
14. “**City**” means the City of St. Louis, a municipal corporation of the State of Missouri, organized and existing under its Charter and the constitution and laws of the State of Missouri.
15. “**Connection**” (with regard to connections to buildings or Access facilities) means installation of fiber optic cable, coaxial cable, or other Cable System-related Facility through the outer wall of a building, leaving adequate

excess Facility to permit further connection to other facilities, plant or cable within the building.

16. **“Document”** or **“Record”** means written or graphic materials, however produced or reproduced, computerized data base information, maps, products of telephone recording or monitoring, or any other tangible record.
17. **“Dwelling Unit”** means any building or portion thereof that has independent living facilities including provisions for cooking, sanitation and sleeping, that is designed for residential occupancy. Buildings with more than one set of facilities for cooking, and buildings that individually house residents but provide common cooking and dining facilities (such as senior citizen care facilities), shall be considered Multiple Dwelling Units (“MDUs”).
18. **“Effective Date”** of a Franchise means the date on which a Grantee’s acceptance of its Franchise is certified as complete and consistent with this Ordinance and its franchise ordinance by the Agency and the City Counselor as more fully provided in Section Four hereof.
19. **“Facility”** means any tangible component of a Cable System, without limitation.
20. **“Federal Communications Commission”** or **“FCC”** is the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.
21. **“Franchise”** means an authorization granted by the City pursuant to its Charter which permits the construction, operation and maintenance of a Cable System within the Franchise Area for the purpose of providing Cable Service, subject to the terms of this Ordinance and a Grantee’s Franchise Agreement.
22. **“Franchise Agency”** means the Communications Division of the Department of Public Utilities of the City of St. Louis, its manager or his delegate, or any successor division or department thereto.
23. **“Franchise Agreement”** means a contract entered into between the City and a Grantee, in accordance with the provisions of this Ordinance, that sets forth the terms and conditions under which a Franchise shall be exercised.
24. **“Franchise Application”** means all documents, submissions, supplemental filings, letters and explanations in which a Grantee or applicant applies for a franchise to construct a Cable System.
25. **“Franchise Area”** means that area under the jurisdiction of the City for which a Franchise is granted under the authority of this Ordinance. The Franchise Area may or may not be coterminous with the City.
26. **“Grantee”** is a holder of a cable Franchise issued by the City pursuant to this Ordinance and a Franchise Agreement.
27. **“Headend”** means any Facility for signal reception and dissemination on a Cable System, including cables, wires, satellite dishes, monitors, switchers, modulators, processors for television broadcast signals, equipment for interconnection of a Cable System with adjacent Cable Systems, interconnection of any separate networks that are part of the Cable System, and all other related equipment and Facilities.
28. **“Interconnection”** means provision by a Grantee of Facilities necessary to maintain a physical link between a Grantee’s Cable System and another network or networks, so that certain Cable Services of technically adequate quality may be sent to and received from other networks, including but not limited to PEG Access programming.
29. **“Major stockholder”** is an owner, directly or indirectly, of ten percent or more of the issued and outstanding voting stock of any corporation.
30. **“Minority group”** means a group of persons legally residing in the United States who are African-American, Asian-American, Native-American or Hispanic-American.
31. **“Open Video System”** means a system certified by the FCC as such pursuant to 47 U.S.C. § 573.
32. **“Permit”** means a revocable approval issued by the Board of Public Service to construct Facilities in Public

Rights-of-Way, subject to terms and conditions established therein, or ancillary Permits such as excavation or street-blocking permits.

33. **“Person”** means any individual, firm, corporation, association, or other legally recognized entity.
34. **“Public Rights-of-Way”** means the surface and space above and below any public street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, alley, right-of-way, or public utility easement. It does not include such places that are now or hereafter permanently and unconditionally vacated by the City to a private Person.
35. **“School”** means (a) any parochial or accredited private primary, middle or secondary school and (b) any taxpayer-funded primary, middle or secondary school (excluding living facilities or Dwelling Units).
36. **“Subscriber”** means any Person who lawfully receives Cable Service from an Operator, including commercial as well as residential accounts the City and its agencies in its capacity as a lawful recipient of such services.
37. **“Transfer”** shall have the meaning given that term in a Franchise Agreement.
38. **“User”** means a Person using all or part of a Cable System to produce or transmit video programming or other programming services, as contrasted with receipt thereof in the capacity of a Subscriber.

B. Rules of Construction

Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Ordinance:

1. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended, or, if not defined therein, in Chapter 47 of the Code of Federal Regulations, or, if not defined therein, their common and ordinary meaning.
2. Words importing the singular number include the plural number and vice-versa.
3. Words in the present tense include the future tense and vice versa.
4. The masculine gender includes the feminine gender and vice versa.
5. All references to particular sections are references to sections of this Ordinance.
6. The headings herein are solely for convenience of reference and do not constitute a part of this Ordinance nor do they affect its meaning, construction or effect.
7. The word “shall” as used herein is always mandatory and not directory, and the word “may” as used herein is permissive.
8. “Applicable law” shall include but is not limited to applicable City ordinances, subject to the provisions of Section Twelve.F.
9. The first letters of terms may be capitalized for convenience, but failure to capitalize a letter shall not affect the meaning.

**SECTION THREE. Franchise required.**

A. It shall be unlawful to commence or engage in the construction, operation or maintenance of a Cable System within the territorial boundaries of the City without first obtaining a Franchise issued under the provisions of this Ordinance and entering into a Franchise Agreement with the City. The City may, by ordinance, award a Franchise to construct, operate, and maintain a Cable System within all or any portion of the City to any Person, whether operating under an existing Franchise or not, who makes application for authority to furnish a Cable System which complies with the terms and conditions of this Ordinance. Provided, that

this section shall not be deemed to require the grant of a Franchise to any particular Person or to prohibit the City from restricting the number of Grantees (for example, due to limited capacity in the Public Rights-of-Way) should it determine such a restriction would be lawful and in the public interest.

B. Any Person that provides Cable Service within the City via Facilities or equipment in the Public Rights-of-Way, but is not required under applicable law to obtain a cable Franchise from the City, must obtain a separate authorization from the City granting such Person the right to do so, pursuant to all applicable City law. This includes, but is not limited to, a Person that provides Cable Service via Facilities or equipment in the Public Rights-of-Way that are not owned by such Person, whether or not the owner is an Affiliate.

#### **SECTION FOUR. Application procedures.**

A. Any Person interested in obtaining an initial franchise to operate a Cable System in the City of St. Louis shall submit an original and nine copies of a written Application to the Franchise Agency together with a nonrefundable application fee of twenty-five thousand dollars. The Application shall contain the following information:

1. The name, address and business structure of the applicant. If the applicant is a corporation, it shall also state the names, addresses and occupations of its officers, directors and major stockholders, and the names and addresses of any parent or subsidiary companies. If the applicant is a corporation controlled by another corporation, the names, addresses and occupations of the officers, directors and major stockholders of the controlling corporation shall also be stated. If the applicant is a partnership or other incorporated association, the name and address of each member, whether active or inactive shall be set forth, and if one or more partners are corporations, the names, addresses and occupations of such corporation's officers, directors and major stockholders shall also be stated;
2. A list of all other Cable Systems, if any, in which the applicant (or any partner or major stockholder of applicant) has a direct or indirect interest, stating the location, approximate number of homes served, and the name and address of the local franchising body;
3. A list of all other Cable Systems, if any, for which the applicant or its corporate parents have obtained franchises but have not yet completed construction. If such other systems exist, the applicant should explain any implications of its financial commitments elsewhere for the financing of its prospective Franchise in the City.
4. A thorough description of the proposed Cable System to be installed and operated; a construction time-table covering start through completion of all Facilities of the system; a time-table for capability to deliver Subscriber service to each portion of the Franchise Area and for the entire City; and a description of the extent and manner in which existing or future poles or other facilities of public utility companies will be used in the proposed system.
5. A copy of any contract which may exist between the applicant and any public utility providing for the use of such utility's property, such as poles, lines or conduits, in the City;
6. A statement setting forth all agreements and understandings whether written, oral, or implied, between the applicant and any other Person with respect to the proposed Franchise or proposed Cable System operation. If a Franchise should be granted to a Person posing as a straw party for or representative of another undisclosed Person, such Franchise shall be deemed void *ab initio* and of no force and effect whatsoever;
7. An estimate of the cost of constructing the applicant's proposed system and a financial statement prepared in form satisfactory to the City showing applicant's financial status and its financial ability to meet these proposed costs. If construction will take more than one year the estimate shall be broken down to costs for each year;
8. A schedule of proposed rates and charges to all classes of Subscribers for both installation and monthly Cable Service, consistent with the financial statement required in Section Four.A.7;
9. A sworn statement acknowledging the applicant's familiarity with and eligibility under the provisions of this Ordinance, the City's customer service ordinance and the rules of the FCC, and its intention to abide by the same;

10. An applicant shall provide any such supplementary information as the City shall at any time demand in order to reasonably determine whether the requested Franchise should be granted. The acceptance or use by the City of any of the written information submitted by the applicant pursuant to this Ordinance shall not constitute any waiver or abrogation of the standards or requirements of this Ordinance with regard to any breach of or non-compliance with this Ordinance which may be reflected in the applicant's written submissions.
- B. The Franchise Agency may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section Four.A.
- C. For the purposes of determining whether it shall grant an initial Franchise, the City or its agents may inquire into all qualifications of the prospective Grantee and such other matters as the City may deem necessary to determine whether and under what conditions an initial Franchise should be granted. An applicant shall assist the City in any such inquiry, and if it fails to do so, the application may be denied.
- D. After receiving an initial Franchise application, the Franchise Agency shall specify a public place where interested parties may inspect all such bona fide applications and schedule a public hearing before the Franchise Agency.

#### **SECTION FIVE. Renewal procedure.**

- A. The renewal of any Franchise shall be conducted in a manner consistent with applicable federal law.
- B. Any ordinance renewing a Franchise shall be adopted in accordance with any applicable requirements of the City Charter.

#### **SECTION SIX. Procedures for ordinances granting or renewing franchises.**

- A. The provisions of Section 1 of Article XIX of the Charter of the City apply to all granting or renewal of Franchises as contemplated in this Ordinance.
- B. Upon introduction into the Board of Aldermen of any board bill the effect of which is to grant or renew any Franchise, the clerk shall immediately notify the Secretary of the Board of Public Service of said fact and transmit to the Board of Public Service a copy of the proposed Board bill that would authorize the granting or renewal of said franchise.
- C. Subject to applicable law, the City reserves any rights it may have to impose application fees for franchise transfer or renewal.

#### **SECTION SEVEN. Transfer**

- A. A Franchise shall be a privilege which is personal to the original Grantee. It shall not be sold, Transferred, leased, assigned, or disposed of, directly or indirectly, in whole or in part, either by forced or voluntary sale, merger, consolidation, receivership, appointment of a trustee or foreclosure, or otherwise, without prior consent of the City expressed by ordinance, and then only under such lawful terms and conditions as may therein be prescribed by the City. Upon such approval a Grantee may proceed to make the Transfer under such terms and conditions. Any such Transfer or assignment shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the Franchise by transferee, a duly executed copy of which shall be filed with the Agency within thirty days after any such Transfer or assignment is complete.
- B. Application.
1. A Grantee shall promptly notify the Franchise Agency of any proposed Transfer. If any Transfer should take place without prior notice to the Franchise Agency (contrary to the requirements of this Section), the Grantee will promptly notify the Franchise Agency that such a Transfer has occurred.
  2. At least one hundred twenty (120) calendar days prior to the contemplated effective date of a Transfer, a Grantee shall submit to the Franchise Agency an original and nine copies of a written Application for approval of the Transfer. Such an application shall provide complete information as described in this Section Seven.B on the proposed transaction. At a minimum, the Application must include (subject to the provisions of Section Seven.B.3 regarding confidential, trade secret, or proprietary information):

- a. all information and forms required under federal law;
  - b. a complete and unredacted copy of the agreement(s) to carry out the proposed transaction(s) and of all schedules, exhibits, and other documents attached thereto, together with any documents referred to therein that were prepared for purposes of the proposed transaction, and any other documents necessary to understand the proposed transaction or its effect on the City; provided, however, that the Grantee may, subject to the provisions of Section Seven.B.3, redact (i) confidential, trade secret, or proprietary information, and (ii) documents relating only to other communities and having no material effect on the proposed transaction as applied to the City;
  - c. a diagram or description of the ownership and control of the proposed transferee, showing the relationship of the proposed transferee to its immediate, intermediate, and ultimate owners;
  - d. to the extent already prepared, audited or, if audited statements are not available, otherwise publicly available financial statements for the transferee or, if such statements for the transferee are not available, such statements for the closest corporate parent in the line of control of the transferee, for the last three years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;
  - e. a description of the sources and amounts of the funds or other consideration to be used in the proposed transaction, and, if the proposed transaction requires that the System be used as collateral for debt, the anticipated debt/equity ratio applicable to the System;
  - f. other information necessary to provide a complete and accurate understanding of the financial qualifications of the proposed transferee to meet the Grantee's obligations under the Franchise;
  - g. a statement certifying that the Transfer will not adversely affect Subscriber rates (which may reserve the proposed transferee's right generally to make any lawful changes in rates after the Transfer), or, in the alternative, explaining any such adverse impact that the proposed transferee reasonably foresees; a statement certifying that the Transfer will not adversely affect the quality of service, or, in the alternative, explaining any such adverse impact that the proposed transferee reasonably foresees;
  - h. a description of the transferee's prior experience in cable system ownership, construction, and operation;
  - i. a brief summary of any plans the proposed transferee may have at the time of the Application regarding line extension, plant and equipment upgrades, channel capacity, expansion or elimination of services, and any other changes affecting or enhancing the performance of the system;
  - j. a complete list of any final actions taken in the past five years by a franchising authority with respect to the proposed transferee (or any corporate parent) denying transfer or renewal;
  - k. a complete list of any legal actions known to the transferee (or any corporate parent) relating to cable franchises (other than tax and condemnation actions) filed in any federal or state court or at the Federal Communications Commission in the past three years by a franchising authority against the transferee (or any corporate parent), or by the transferee (or any corporate parent) against a franchising authority, listing for each such action the information normally shown in the case caption and the current status of the case (for example, "settled" or "pending");
3. Confidential, Trade Secret, or Proprietary Information
- a. If a Grantee claims that any specific documents or portions thereof required by Section Seven.B.2 of this Ordinance are confidential, trade secret, or proprietary, then rather than submitting such documents or portions thereof with the Application, the Grantee may redact such specific documents or portions thereof and include with the Application a schedule of all such documents or portions thereof identifying any redacted materials and the basis on which the Grantee believes them to be confidential, trade secret, or proprietary.



**SECTION EIGHT. Payments to the City.**

A. A Grantee shall pay the City as compensation for the rights and privileges enjoyed under the Grantee's Franchise a sum equal to five percent of the gross revenues derived from operation of the Grantee's Cable System within the City to provide Cable Services.

B. A Grantee shall file with the Comptroller and the Franchise Agency a quarterly statement showing the gross revenues derived from the operation of its Cable System within the City during the three month periods ending respectively on the last day of March, June, September and December of each calendar year. Said statements shall be filed not later than forty-five days after the close of the quarterly period to which they apply. Statements shall include a detailed fee calculation report delineating categories of revenues, calculation methodology, and other pertinent documentation with form and content acceptable to the Agency and the City Comptroller and subject to revision to reflect new services or business conditions.

C. A quarterly installment of the payment required in Section Eight.A shall be paid at the time of filing each statement required by Section Eight.B and shall be submitted with said statements. Each such quarterly payment shall be in an amount equal to the portion of the annual payment which accrued during the quarter which is recorded in the statement.

D. The City shall have the right to inspect a Grantee's records showing the gross revenues from which its Franchise payments are computed, and shall also have the right of audit and recomputation of any and all amounts paid under this Ordinance.

E. In the event that any payment required from a Grantee under this section is not paid when due, there shall accrue to such debt, from and after the due date and running until such payment is received by the City (either from the Grantee directly or by recovery from a bond, letter of credit, escrow amount, or similar instrument), interest at ten percent per annum.

F. For purposes of calculating franchise fee payments under applicable Franchise provisions, in any aggregated bill which includes cable services and non-cable services or other products, any charges and discounts shall be allocated in a reasonable manner and in accordance with generally accepted accounting principles (GAAP). Franchise fee payments covering periods in which any such aggregated bill is used shall be accompanied by a full explanation of such allocation and the amounts so allocated. Any such allocation may be addressed in any audit conducted pursuant to this Ordinance or any Franchise Agreement.

G. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this Ordinance or for the performance of any other obligation hereunder; however, an accounting rendered to the City and to which no exception is made within five years after receipt by the City shall be deemed to be accurate and shall not thereafter be subject to question or made the basis of any claim by City against grantee.

H. Payment of the Franchise fee shall not be considered in the nature of a tax or in lieu of other taxes or fees imposed by the City. The Franchise fee is in addition to all other taxes, fees, assessments, and payments that a Grantee may be required to pay under its Franchise Agreement or any federal, state, or local law or ordinance, and to any other tax, fee, assessment or payment imposed on utilities and Cable Operators or their subscribers for use of their services, facilities, or equipment, including any applicable amusement taxes, except to the extent that such fees, taxes, or assessments are a Franchise fee under Section 622 of the Cable Act, 47 U.S.C. § 542.

I. A franchise ordinance may require a Grantee to contract, for all or part of a franchise term, for lock box service with a bank with an office in the City. Such a contract shall be subject to approval by the Franchise Agency and shall provide that a lock box address shall be the Grantee's designated address for mailed payments by Subscribers, and may provide for periodic disbursements of lock box receipts to the City for application to the Grantee's Franchise fee obligations to the City.

**SECTION NINE. Acceptance and term of franchise.**

A. Any cable Franchise granted by the City shall be for a term of no more than fifteen years; which time shall commence to run upon the Effective Date of the Franchise. This Section shall not preclude the extension or renewal of a Franchise pursuant to applicable law, but any renewal period shall also be limited to fifteen years.

B. A Grantee shall accept its Franchise by executing its Franchise Agreement and filing it with the City Register within thirty City business days after the effective date of the ordinance awarding that Franchise. An acceptance is not valid unless and until the Agency and the City Counselor certify in writing to the City Register that the acceptance is complete and consistent in all respects with the requirements of this Ordinance and the Grantee's Franchise Agreement. An acceptance shall consist of a written and

unconditional acceptance of and agreement to all the provisions of a Grantee’s Franchise Agreement and this Ordinance, and shall also consist of all of the following:

- a. Any certificates of insurance required by its Franchise Agreement or this Ordinance;
- b. Any bond, letter of credit, escrow amount, or similar instrument required by its Franchise Agreement or this Ordinance.
- c. Proof of establishment of any construction escrow account required by its Franchise Agreement or this Ordinance;
- d. Any other executed contracts or other documents as required by its Franchise Agreement or this Ordinance.

C. A Grantee’s Franchise Agreement shall constitute a contract between the City and the Grantee upon the Grantee’s acceptance of its Franchise pursuant to this Section Four.

D. Unless and until a Grantee completes an acceptance pursuant to this Section Four, the Franchise awarded subject to the completion of such acceptance shall have no effect, and the Grantee shall obtain no new right therefrom, and any right of Grantee to construct, operate or maintain a Cable System in the City shall be subject to the City’s permitting, in its sole discretion, where applicable, such construction, operation, or maintenance under such terms and conditions as may then be in effect for a period of time sufficient, in the City’s judgment, to ensure continuity of Cable Service to Subscribers, to allow further negotiations, renewal, or application processes, or to terminate a Franchise pursuant to applicable law and allow a Grantee to dispose of its System in a manner approved by the City, all subject to applicable law.

**SECTION TEN. Termination of franchise.**

A. In addition to all other rights and powers reserved by the City in granting any franchise, the City reserves the right to terminate and cancel any Franchise and all rights and privileges of the Grantee thereunder pursuant to the terms of its Franchise Agreement and this Ordinance, or as such termination or cancellation may be expressly provided for in a related agreement with the City, in the event that the Grantee:

- 1. Materially violates any provision of the Grantee’s Franchise, or any rule, regulation, order or determination of the City made pursuant to the Franchise, except where such violation is without fault or through excusable neglect, provided that a Grantee is not without fault if a violation is caused or committed by an Affiliate or a corporation or business entity in which such Grantee holds a controlling interest directly or indirectly;
- 2. Attempts to dispose of any of the Facilities or property of its cable business to the detriment of its Franchise;
- 3. Attempts a material evasion of any of the provisions of its Franchise;
- 4. Practices any fraud or deceit upon the City;
- 5. Violates the material construction requirements of Section Nineteen of this Ordinance.
- 6. Violates any related agreement with the City which expressly provides for Franchise termination in the event of such violation.

B. The procedure for termination of a franchise under Section Ten.A shall be as follows:

- 1. If the Franchise Agency determines that a Grantee is not, in its opinion, in material compliance with this Ordinance or the terms or conditions of any Franchise issued thereunder, or any rule, regulation, order or determination of the City made pursuant to the Franchise, it may initiate such termination proceedings by notifying the Grantee with a copy to the Board of Aldermen, and the Grantee shall within thirty days bring the franchised system into compliance with the terms of the notice issued by the City, reporting the corrective action taken by the Grantee to the Franchise Agency.

2. If a majority of the members of the Board of Aldermen state by Resolution that they are not satisfied that compliance has been achieved, or that good faith progress is being made toward compliance, a public hearing before the Public Utilities Committee or its successor shall be scheduled to determine whether the Franchise should be revoked. The Grantee and the public shall be given at least fifteen days notice of such hearing. All interested parties shall be heard in an open and public hearing. Subsequent to the public hearing, the Board of Aldermen shall determine whether the Franchise shall be terminated and shall set forth, in writing, the facts and reasons upon which its decision is based.
- C. Termination on account of certain assignments or appointments
1. To the extent not prohibited by the United States Bankruptcy Code, a Franchise shall terminate automatically by force of law one hundred eighty (180) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee (including a debtor-in-possession in a reorganization) to take over the business of a Grantee, whether in bankruptcy or under a state law proceeding; provided, however, that such Franchise shall not so terminate if, within that one-hundred-eighty-day period:
    - a. Such assignment, receivership or trusteeship has been vacated; or
    - b. Such assignee, receiver, or trustee has cured or agreed to cure any defaults under the Franchise and has executed an agreement, duly approved and executed on behalf of the City, submitted to any court whose approval is required within one hundred twenty (120) days after such assignment or appointment, and approved by any such court within an additional sixty (60) days thereafter, under which it assumes and agrees to be bound by the terms and conditions of the Franchise.
  2. To the extent not prohibited by the United States Bankruptcy Code, in the event of foreclosure or judicial sale of substantially all of the Facilities, equipment, or property of a Grantee, the Franchise and Franchise Agreement shall automatically terminate one hundred eighty (180) calendar days after such foreclosure or sale, unless:
    - a. The City has approved a Transfer of the Franchise to the successful bidder in accordance with the provisions of this Section Seven; and
    - b. The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise.

**SECTION ELEVEN. Amendment of franchises.**

Any amendment of a Franchise Agreement shall be subject to acceptance by the Grantee, except that nothing herein or in any Franchise Agreement shall be construed to limit the lawful exercise of the City's police power, authority lawfully to levy any nondiscriminatory taxes on any activity conducted by a Grantee, or other lawful authority, whether exercised by ordinance or otherwise. Nothing herein, however, shall affect the City's or a Grantee's rights with respect to renewal of the Grantee's Franchise.

**SECTION TWELVE. Conditions and limitations of Franchise.**

- A. This Ordinance itself grants no authority to operate a Cable System. Such grants shall be made by the adoption of a separate ordinance pursuant to the provisions of the City Charter and this Ordinance concerning approval of ordinances granting or renewing a specific Franchise to an applicant who has complied with the provisions of this Ordinance.
- B. No ordinance granting a Franchise shall be adopted until all requirements of the Charter relating to such an ordinance have been complied with.
- C. A Franchise authorizes use of Public Rights-of-Way for installing, operating and maintaining, as herein and in the Franchise Agreement provided, cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a Cable System to provide Cable Service within a Franchise Area, but does not authorize a Grantee to place facilities on private property without owner consent, provided, however, that other applicable law may operate to authorize such placement.
- D. A Franchise shall constitute both a right and an obligation to use a Cable System to provide Cable Service in the City pursuant to the requirements of the Grantee's Franchise Agreement and this Ordinance.

E. Any franchise granted under this Ordinance shall be non-exclusive and revocable pursuant to its terms, and nothing herein shall be construed to prevent the City from granting cable Franchises or other Public Right-of-Way authorizations to more than one Person, within all or any portion of the City. The City shall not grant a Franchise or similar authorization for cable services that would impose an unfair competitive disadvantage on a Grantee by granting terms or conditions under another Person's franchise agreement or similar authorizing document that are materially more favorable or less burdensome than those of such Grantee under its Franchise Agreement or similar authorizing document.

F. A Grantee, shall at all times during the life of its Franchise, be subject to the lawful exercise of the City's police power, authority lawfully to levy any nondiscriminatory taxes on any activity conducted by Grantee, or other lawful authority, whether exercised by ordinance or otherwise. Nothing contained in this Ordinance shall be deemed to prohibit in any way the right of the City lawfully to levy any nondiscriminatory taxes on any activity conducted by Grantee.

G. All privileges prescribed by a Franchise shall be subordinate to any prior lawful occupancy of the Public Rights-of-Way, and the City reserves the right to reasonably designate by permit or otherwise where a Grantee's facilities are to be placed within the Public Rights-of-Way.

H. Nothing in this Ordinance in any way impairs or waives any right or power of the City to acquire the property of a Grantee by purchase at a price reflective of its fair market value as an ongoing concern (provided that in no event is the franchise itself to enter as an element into such compensation) or such other price as may be required pursuant to applicable law, or through the exercise of the power of eminent domain pursuant to Missouri law.

I. This Ordinance, and Franchises granted under this Ordinance, shall be subject to the applicable provisions of the U.S. Constitution and the Constitution of the State of Missouri.

#### **SECTION THIRTEEN. Channel capacity and system requirements.**

A. Channel Capacity. A Grantee shall construct a Cable System that shall have a minimum capacity of 750 MHz.

B. Emergency Alert System. A Grantee shall design and construct the system to provide for an emergency alert system as specified in its Franchise Agreement.

#### **SECTION FOURTEEN. Two-way capacity and addressability.**

Any system shall be, at the time of its installation and at all times thereafter maintained as, a two-way interactive addressable system.

#### **SECTION FIFTEEN. PEG Access requirements.**

A. A Grantee's Franchise Agreement shall require the Grantee to provide and maintain:

1. **Municipal and School Services.** At least one service outlet to each municipal facility and public or private School within its franchise area at no cost to the City or School systems involved, and charging only its time and material costs for any additional service outlet installations to such facilities;
2. **A Public Access Channel.** At least one specially designated, non-commercial Public Access Channel available on a first-come, nondiscriminatory basis and managed by a nonprofit organization acceptable to the City;
3. **A Community Access Channel.** At least one specially designated, non-commercial Community Access Channel available on a first-come, nondiscriminatory basis and managed by a nonprofit organization acceptable to the City;
4. **A Local Government Access Channel.** At least one specially designated channel available for City use;
5. **An Elementary and Secondary Educational Access Channel.** At least one specifically designated channel for use by local educational authorities at the elementary and secondary levels;
6. **A University and College Educational Access Channel.** At least one specially designated channel for use by the local (St. Louis or St. Louis County) universities and colleges, whether public or private institutions;

- B. Access Channel assignments shall be the same throughout the Cable System in the City.
1. Access Channel assignments shall not be changed unless there is good cause.
  2. If a Grantee seeks to change the channel assignment of an Access Channel more than twice during a Franchise term, the Grantee must obtain the consent of the Access Channel User to the additional change, which consent shall not be unreasonably withheld.
  3. Any reassignment of an Access Channel must be to a channel of technical quality at least equivalent to that of other channels on the system.
  4. In the event of such a reassignment, the Grantee shall pay the costs of all equipment, advertising, and promotional materials required due to the reassignment.
- C. A Grantee by accepting a Franchise agrees that the City may, from time to time, by ordinance regulate use of Public Access Channels; and that it will permit the public to use the Public Access Channel or Channels at minimal or no cost.
- D. A Grantee will provide any PEG Access Channels on the basic tier throughout the life of the Franchise, or if there is no basic tier, shall provide the PEG Access Channels at no charge to Subscribers, and otherwise in accordance with federal and state law. If channels are selected through a menu system, the PEG Access Channels shall be displayed; provided, however, that the City or its designee shall be responsible for providing any necessary information for the PEG access channels for the menu system as reasonably required by the Grantee or the entity providing Grantee's menu system.

**SECTION SIXTEEN. Technical requirements and channel capacity.**

- A. The Cable System to be constructed by Grantee shall be installed, maintained, and operated at all times in full compliance with all applicable technical and channel capacity standards of the Federal Communications Commission.
- B. The results of annual performance tests in accordance with FCC rules and regulations shall be retained by a Grantee for at least five (5) years and shall be available for inspection by the Franchise Agency during business hours at Grantee offices in the City upon twenty-four hours' notice. Copies of such test results shall be promptly provided upon the Agency's request.
- C. A franchise agreement shall address technical performance and testing procedures.
- D. A Grantee shall conduct monthly tests of the emergency alert system, in conjunction with the City department designated for such testing.
- E. The City shall have the authority to inspect any portion or component of the system, including but not limited to subscriber connections, in order to enforce compliance with the provisions, standards, and requirements of FCC regulations.

**SECTION SEVENTEEN. Safety requirements.**

- A. A Grantee shall at all times:
1. Install and maintain its wires, cables, fixtures, and other equipment in accordance with good engineering practices and the requirements of the National Electrical Safety Code promulgated by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and any other applicable codes and standards;
  2. Install and maintain all structures, lines, equipment, and connections in, over, under and upon the Public Rights-of Way of the City and other public or private property in such safe condition so as not to endanger human life or health or property;
  3. Maintain and implement procedures for responding to reports of dangerous situations and correcting any dangerous situations in a timely manner twenty-four hours a day, seven days a week.
- B. The authorized inspection officials of the City shall have the authority to inspect and enforce compliance with the

provisions of this section, including inspection of the system's technical equipment and facilities.

**SECTION EIGHTEEN. Conditions on street occupancy.**

A. Work on a Grantee's aerial or underground plant, including but not limited to any pavements, sidewalks, curbing or other area uprooted or any excavations made by a Grantee, shall be done under the supervision and direction of the Franchise Agency or its designee under permits issued for work by the proper officials of the City, and in accordance with the conditions listed in such permits. A Grantee must obtain such permits, without limitation, when relocating plant from aerial to underground, installing new or additional aerial strand or underground conduits, manholes, handholes or vaults.

1. Such work shall be done in such manner as to protect all existing property belonging to the City and so as to cause the least inconvenience to the inhabitants of the City.
2. A Grantee shall comply with City Street Department regulations regarding resurfacing or restoration of pavements, sidewalks, curbing or other areas, or payment for such resurfacing or restoration.

B. A Grantee shall make and keep full and complete plats, maps and records showing the actual locations of its facilities located within the Public Rights-of-Way of the City. These maps shall be provided to the Franchise Agency in both hardcopy and compatible electronic formats, updated at least annually and at such other times as may be specified by the Franchise Agency. In addition, the Grantee shall make "as-built" maps (as that term is used in the cable industry) available to the City for inspection.

C. A Grantee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property in the public rights-of-way when required by the City by reason of traffic conditions, public safety, street construction, change of street grade, installation of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal improvements. The City shall give reasonable notice under the circumstances.

D. A Grantee shall, on the request of any Person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

E. All cable, wires, or other similar facilities, shall be underground in those areas of the City where similar facilities of all telephone and electric utilities are underground at the time of installation of the Grantee's Cable System. In areas where both telephone and electric utilities' facilities are aboveground at the time of installation of the Grantee's Cable System, the Grantee may install its system aboveground, upon the condition that at such time as such facilities are placed underground by all telephone and electric utility companies, the Grantee shall likewise place such facilities underground at its sole cost and expense.

F. Each Grantee's Facilities are subject to the City's vacation authority. In the event that Public Rights-of-Way are vacated by the City and deeded to a private entity, the receiving entity shall be responsible for any costs associated with removal of a Grantee's Facilities. If agreement cannot be reached between the receiving entity and the Grantee as to such costs, the City may require the Grantee to remove its Facilities for such consideration and upon such terms as the City shall determine to be just and reasonable.

G. No poles or other wire-holding structures shall be erected by a Grantee without prior approval of the Franchise Agency, with regard to location, height, type and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby and provides the Grantee reasonable notice under the circumstances.

H. Where poles or other wire-holding structures already existing for use in serving the City are available for use by a Grantee, but it does not make arrangements for such use, the City may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

I. Where the City or a public utility serving the City desires to make use of the poles or other wire-holding structures of a Grantee but agreement therefor with the Grantee cannot be reached, the City may require the Grantee to permit such use for such consideration and upon such terms as the City shall determine to be just and reasonable, if the City determines that the use by the City in its governmental capacity for noncommercial purposes would enhance the public convenience and would not unduly interfere

with the Grantee's operations.

**SECTION NINETEEN. Construction.**

A. Each Franchise Agreement shall specify the time by which initial or required upgrade construction thereunder, if any, must begin, and shall specify that construction will be completed with reasonable speed, pursuant to Article XIX of the Charter.

B. A Grantee shall file a map and progress report with the Franchise Agency at the close of each calendar year, showing the exact areas of the City being served by the Cable System and the location and identification of major component parts of the system.

C. A Grantee that is constructing its cable system for the first time shall submit monthly construction reports to the Franchise Agency, beginning the month after the Franchise is awarded and continuing until the initial construction required in its franchise agreement is complete. Such a Grantee must submit updated as-built system design maps to the Franchise Agency, or make them available for inspection with notice of their availability, within 30 days of the completion of system construction in any geographic area. These maps shall be developed on the basis of post-construction inspection by the Grantee and construction personnel to assess compliance with system design. Any departures from design must be indicated on the as-built maps, to assist the Franchise Agency in assessing operator compliance with its obligations.

D. A Grantee shall promptly notify the Franchise Agency of any delays known or anticipated in the construction of its system or in providing access to said system.

E. Failure on the part of a Grantee to commence and diligently pursue each of the material requirements in its Franchise Agreement to complete construction pursuant to this Section Nineteen shall be grounds for termination of its Franchise pursuant to Section Ten; provided, however, that the City may in its discretion extend the time for the commencement and completion of construction and installation and service to Subscribers for additional periods in the event a Grantee, acting in good faith, experiences delays by reasons of circumstances beyond its control.

F. At such time as a Grantee shall become aware that circumstances beyond its control may prevent its compliance with the provisions of this Section Nineteen, said Grantee shall immediately notify the Franchise Agency, in writing, as to the exact conditions responsible for such delay, and shall show the specific remedy and methods it has undertaken to correct said condition causing the unanticipated delay. Failure to file said written notification by the grantee shall constitute an act of bad faith.

G. In the event the operation of any part of a franchised Cable System is discontinued for a continuous period of four months, or in the event such system has been installed in any Public Rights-of-Way without complying with the requirements of the Grantee's Franchise, or in the event of expiration, termination or revocation of the franchise and, where applicable, an affirmative determination by the City not to renew such franchise, the City may direct a Grantee promptly to remove at Grantee's cost from the Public Rights-of-Way all such property and poles of such system or part of a system. Any property which the Grantee allows to remain in place twelve months after having been notified by the City that it must be removed (or, if specific right-of-way space occupied by Grantee's plant is immediately needed for purposes of providing cable service, sixty days after such notice) shall be considered permanently abandoned and shall become the property of the City subject to the provisions of any utility joint use attachment agreement.

**SECTION TWENTY. Rates charged to Subscribers.**

A. The City reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.

B. A Grantee shall comply with all applicable law and regulations regarding rates and charges. In particular, and without limitation, a Grantee shall comply with all rate orders issued by the City unless such orders are stayed by a court or agency of competent jurisdiction.

C. Procedures and local rules for rate regulation shall be established by the Franchise Agency and confirmed by resolution of the Board of Aldermen in accordance with applicable law.

**SECTION TWENTY-ONE. Minority and women participation, training.**

In light of the economic benefits a Grantee derives from its use of the public rights-of-way and the racial, ethnic and socio-economic diversity of the population of the City:

A. Any Franchise Agreement shall address minority and women's business participation through contracts for professional

and technical services, construction contracts or subcontracts, and supply contracts; and the hiring of members of minority groups and women by the Grantee. Franchise Agreements shall also address monitoring, verification, reporting and enforcement methodologies relating to such provisions.

B. Any Franchise Agreement shall address training of potential employees by Grantees in a manner beneficial to residents of the City, and/or funding or other support of programs for such training. Franchise Agreements shall also address monitoring, verification, reporting and enforcement methodologies relating to such provisions.

**SECTION TWENTY-TWO. Job skills and training.**

A Franchise Agreement shall address provision by a Grantee of non-employee training opportunities and internships.

**SECTION TWENTY-THREE. Other business activities.**

A Franchise hereunder authorizes only the operation of a Cable System as provided for herein, and does not take the place of any other Franchise, license, or permit which might be required by law of a Grantee.

**SECTION TWENTY-FOUR. Continued use of individual antennas protected.**

It is not the City's intention to prohibit the erection or continued use of individual television antennas, and no one is or will be required to receive cable service or connect with a Cable System.

**SECTION TWENTY-FIVE. Grantee may promulgate rules.**

A Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business, consistent with its Franchise Agreement and applicable law, as shall be reasonably necessary to enable it to exercise its rights and perform its services under this Ordinance and the rules of the FCC, and to assure uninterrupted service to each and all of its Subscribers. Such rules and regulations shall not be deemed to have the force of law, and the Grantee shall not, as to rates, charges, service, services, facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any Person, nor subject any Person to any prejudice or disadvantage.

**SECTION TWENTY-SIX. Discriminatory practices prohibited**

A. A Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, programmers, or residents of the City on the basis of race, color, religion, national origin, sex, or age. A Grantee shall comply at all times with all applicable federal, state, and City laws, and all executive and administrative orders relating to non-discrimination.

B. A Grantee shall not discriminate among Persons or take any retaliatory action against a Person because of that Person's exercise of any right it may have under federal, state, or local law, nor may the Grantee require a Person to waive such rights as a condition of taking service.

C. A Grantee shall not deny access or levy different rates and charges on any group of potential residential cable subscribers because of the income of the residents of the neighborhood or local area within the City in which such group resides.

D. Subject to applicable law and except to the extent the City may waive such a requirement, a Grantee is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Grantee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the City; and a Grantee may offer discounts for the elderly, the handicapped, non-for-profit persons or organizations, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner.

**SECTION TWENTY-SEVEN. Liability and indemnification.**

A. A Grantee shall pay, and by its acceptance of a Franchise specifically agrees to pay and indemnify the City for, any and all damages or penalties which the City may sustain or be legally required to pay as a result of Grantee's installation, operation or maintenance of a Cable System under this Ordinance or in any way resulting from acts or omissions of a Grantee hereunder, including

its agents, employees and subcontractors, whether or not the acts or omissions complained of are authorized, allowed or prohibited by the City, and whether or not covered by insurance. The obligations under this Section Twenty-seven shall not limit any right of a Grantee to assert any claim against any third party.

B. A Grantee shall also pay all expenses incurred by the City in defending itself with regard to any and all damages and penalties mentioned in Section Twenty-seven.A, above. These expenses shall include all out of pocket expenses, including reasonable attorneys' fees and the reasonable value of services rendered by any employee of the City, or expert witness or consultants hired by the City in connection with such defense.

C. A Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring the City and the Grantee with regard to all damages mentioned in subsection A, above, caused by Grantee or its agents.

D. Additionally a Grantee shall maintain in full force and effect policies of insurance in forms and minimum amounts hereafter described to-wit:

1. Workmen's Compensation insurance as provided by the laws of the state;
2. \$500,000 for bodily injury or death to any one person; \$1,000,000 for bodily injury or death resulting from any one occurrence;
3. \$1,000,000 for property damage resulting from any one occurrence;
4. \$1,000,000 for all other types of liability.

E. The insurance requirements herein shall not be construed to limit the liability of a Grantee to the City to the amounts of such insurance.

F. The insurance policies obtained by a Grantee in compliance with this section shall be issued by a company with a rating of A+ or better by A.M. Best Company and licensed to do business in the State of Missouri, and a current certificate or certificates of insurance shall be filed and maintained with the Franchise Agency during the term of the Franchise. Said policies shall name the City as an additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City thirty days in advance of the effective date thereof.

G. All subcontractors used by a Grantee in the City shall be licensed to do business in the City pursuant to applicable law.

H. The amounts of any policy required by this Section Twenty-seven.D may be increased at the initiative of the City's Comptroller, but not more than twice during the term of a Franchise and not more frequently than every five years, as follows: If the Comptroller believes that the amount of insurance provided by any policy required hereunder has become inadequate, the Comptroller shall notify the Grantee of such fact, and of the higher amount the Comptroller believes necessary. If within thirty days after such notice the Grantee and Comptroller have not agreed on an appropriate amount of insurance, each of them shall within seven days designate a professional insurance broker from the St. Louis metropolitan area, and such designated brokers shall within seven days designate a third such broker. Within thirty days after their designation, the panel of brokers shall notify the Comptroller and the Grantee of the insurance which, in their judgment, is appropriate in the circumstances, and Grantee shall procure any increased coverage required. In no event shall the amounts of insurance required by Section Twenty-seven.D be reduced pursuant to this Section Twenty-seven.H.

#### **SECTION TWENTY-EIGHT. Performance bond.**

A. With its acceptance of a Franchise, a Grantee shall file with the City Register an executed bond in a form and with a surety acceptable to the City as specified in its franchise agreement to indemnify the City against any loss or damage it may suffer in the event the Grantee fails to comply with one or more of the provisions of its Franchise. Upon written application by a Grantee, the Franchise Agency may, at its sole option, in writing, permit the amount of the bond to be reduced to reflect the percentage of completion of the Grantee's planned construction. Said bond shall be obtained at the sole expense of the Grantee and remain in effect for the full term of the Franchise or any extension (as distinct from renewal) thereof plus an additional six months thereafter (unless a replacement bond covering that period is agreed to by the City). The Grantee and its surety shall be jointly and severally liable under the terms of the bond for any damages or loss suffered by the City as a result of the Grantee's failure to comply with one or more of the provisions of its Franchise, including a reasonable allowance for the City's lawful attorneys' fees and costs, up to the full

amount of the bond.

B. Neither the filing of a performance bond with the Agency, nor any insurance coverage, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by a Grantee or limit the liability of a Grantee under the terms of its Franchise for damages, either to the full amount of the bond or otherwise.

C. A Grantee shall with its acceptance of a Franchise tender such other security as may be specified by its Franchise Agreement.

**SECTION TWENTY-NINE. Right of City to intervene.**

The City or its designee hereby reserves to itself the right to intervene in any suit, action, or proceeding involving any provision of this Ordinance.

**SECTION THIRTY. Fines**

A. Performance of acts prohibited by, or failure to perform acts required by Section Three, Section Seven. A, Section Twelve .C, Section Twelve. D, Section Thirteen, Section Fourteen, Section Sixteen, Section Seventeen, Section Eighteen, Section Nineteen, Section Twenty-six, Section Twenty-eight through Section Thirty-four, and Section Thirty-five of this Ordinance constitute violations of this Ordinance. Violations of Section Seven.E.2 and Section Fifteen of this Ordinance shall be punishable by a fine of up to Five Hundred Dollars. Any other violation of this Ordinance shall be punishable by a fine of up to Two Hundred Fifty Dollars. Each day that any violation of this ordinance shall continue is a separate violation punishable by the applicable fine.

B. A Franchise Agreement shall provide:

1. contractual remedies for the City in the event of violations of the Franchise Agreement by the Grantee;
2. that a violation of the Franchise Agreement which continues after appropriate notice and opportunity to cure, if any, is a violation of this Ordinance as well as a violation of the Franchise Agreement.

C. Any violation of a Grantee's Franchise Agreement which continues after appropriate notice and opportunity to cure, if any, as provided in such Franchise Agreement, is a violation of this Ordinance and subject to a fine of up to \$500.

D. If a Grantee is fined for a violation of this Ordinance pursuant to this Section Thirty, such Grantee shall not be subject to liquidated damages pursuant to its Franchise Agreement for the same violation. If a Grantee is subject to liquidated damages pursuant to its Franchise Agreement for a violation, it shall not be fined for a violation of this Ordinance pursuant to this Section Thirty for the same violation.

E. To initiate the enforcement process under this Section Thirty, the Franchise Agency shall notify the City Counselor that it believes that a violation of this Ordinance, or of a Grantee's Franchise Agreement, has occurred. In such event, if the City Counselor in his discretion determines that there is a reasonable basis for belief that a violation has occurred, he may prosecute such violation pursuant to Missouri law.

F. In his discretion, the City Counselor may authorize alternative enforcement proceedings by the Agency. Such authorization shall be in writing, with notice to any affected Grantees. The procedure for such alternative enforcement procedures shall be as follows:

1. Hearing procedures.
  - a. The Regulatory Section of the Franchise Agency shall issue a notice of complaint/violation to a Grantee in writing, specifying the nature and time of the violation and proposing a penalty consistent with this Section.
  - b. In response to a notice issued under Section Thirty.F.1.a, a Grantee may agree to pay the proposed penalty, or may contest such notice. A Grantee may contest such notice by notifying the Communications Commissioner in writing within ten (10) business days after the Grantee's receipt of the notice issued by the Regulatory Section. Such a Grantee's Reply shall include the basis for the

Grantee's objection and any supporting documents the Grantee wishes to have considered in reviewing the notice of violation.

- c. Within ten (10) business days after receipt of a Grantee's Reply, the Communications Commissioner shall notify such Grantee and the Regulatory Section of a date, time and place of a hearing on the matter, which date shall be not less than fifteen (15) and not more than forty-five (45) days from the date of such notification by the Commissioner.
- d. The hearing shall be conducted as required by the Missouri Administrative Procedure Act, Ch. 536 RSMo, as amended (the AAPA@), for a contested case.
- e. Not less than thirty (30) days following the conclusion of the hearing, the Communications Commissioner shall issue a written decision consistent with the APA, finding that the complaint/violation as stated in the notice is proven and imposing an appropriate administrative penalty, or modifying or dismissing the Regulatory Section's notice of violation. If the Communications Commissioner does not issue such a decision within such thirty day period, the Regulatory Section's notice of violation shall be deemed dismissed, provided that the Communications Commissioner may extend such period up to a total of 45 days.
- f. Decisions of the Communications Commissioner pursuant to Section Thirty.F.1.e are appealable pursuant to the APA.

2. Hearing officers.

In lieu of conducting a hearing himself, the Communications Commissioner may appoint a hearing officer to conduct any hearing pursuant to this Section Thirty and submit recommended findings of fact and conclusions of law to the Commissioner. If so, the Commissioner's notice of hearing shall so advise the Grantee and the Regulatory Section within ten (10) business days of receipt of Grantee's Reply, and shall advise the parties of the name and address of the hearing officer. Hearing Officers may, but need not, be attorneys, and may be appointed from any list of duly selected hearing officers maintained by any City department or agency.

3. Regulations

The Franchise Agency may issue regulations concerning enforcement procedures which are consistent with this Ordinance and applicable law. All Grantees shall be provided written notice of and opportunity to comment on any such regulations prior to their applicability as to that Grantee.

**SECTION THIRTY-ONE. Rights and remedies are cumulative.**

The rights and remedies reserved to the parties by this Ordinance are cumulative and shall not add or subtract from any other rights or remedies which they may have with respect to the subject matter of this Ordinance, and a waiver thereof at any time shall not affect any other time.

**SECTION THIRTY-TWO. Delegation of powers.**

This Ordinance shall be administered on behalf of the City by the Franchise Agency. Any lawfully delegable right, power, or duty of the Board of Aldermen hereunder is delegated to the Franchise Agency. The Franchise Agency shall appear before the Public Utilities Committee of the Board of Aldermen every six months to report on the administration of the cable franchise ordinances and on the grantees compliance with such ordinances. The Franchise Agency shall appear before the Public Utilities Committee at all other times as determined by the chairman or a majority of the members of such committee to address the administration of the franchise ordinance and any other matter within the jurisdiction of the Franchise Agency or the Board of Aldermen as related directly or indirectly to cable services in the City of St. Louis.

**SECTION THIRTY-THREE. Resolution of complaints.**

A. Responsibility for the administration of any franchise granted hereunder and for the resolution of all complaints against a Grantee regarding the quality of service, equipment malfunctions, and similar matters, is hereby delegated to the Franchise Agency,

which is empowered, among other things, to adjust, settle, or compromise any controversy arising from operations of the Grantee, either on behalf of the City, the Grantee, or any subscriber, in accordance with the best interest of the public; provided that any person aggrieved by a decision of the agency may within fifteen days of the decision appeal the matter in writing to the Board of Aldermen for hearing and determination.

B. In the event of such an appeal, the Board of Aldermen shall assign the matter to the Public Utilities Committee or to such committee having jurisdiction over cable television franchises. Such committee shall hold a hearing on such appeal upon fifteen days written notice to the appellant, shall receive evidence at such hearing and shall recommend a resolution of the matter to the Board of Aldermen. The Board of Aldermen may, by resolution, accept, reject, or modify the decision of the Agency, and may adjust, settle, or compromise any controversy arising from the operations of a Grantee under any franchise granted pursuant to this Ordinance.

C. No adjustment, settlement, or compromise, whether instituted by the Franchise Agency or by the City, shall be contrary to the provisions of this Ordinance or of the Franchise Agreement.

**SECTION THIRTY-FOUR. Tampering and theft of service.**

- A. It shall be a violation of this Ordinance for any Person to knowingly commit any of the following acts:
  - 1. obtain or attempt to obtain services of a Cable Operator, by means of artifice, trick, deception, device or other means, without paying all lawful compensation therefor;
  - 2. assist another Person in obtaining or attempting to obtain services of a Cable Operator without paying all lawful compensation therefor;
  - 3. connect to, tamper with or otherwise interfere with any cables, wires or other devices used for the distribution of services of a Cable Operator if the effect of such action is to obtain services of a Cable Operator without paying all lawful compensation therefor; or
  - 4. sell, use, manufacture, rent or offer for sale, use or rental any device, plan or kit designed and intended to obtain services of a Cable Operator without paying all lawful compensation therefor.

B. The existence on the property of and in the actual possession of any Person of any connection wire, or conductor, which is connected in such a manner as to permit the use of services of a Cable Operator without the same being reported for payment to and specifically authorized by the Cable Operator shall be sufficient to support an inference that the Person intended to deprive such Cable Operator of any and all lawful compensation for rendering each type of service obtained.

C. It shall be a violation of this Ordinance for any Person to knowingly destroy or damage any property of any kind belonging to a Cable Operator.

**SECTION THIRTY-FIVE. Open Video Systems**

- A. Applicability of Ordinance.
  - 1. This Ordinance shall apply to Open Video Systems to the extent permitted by applicable law, except that Section Thirty-five.B shall apply in place of the following sections: Section Four.A (franchise applications), Section Twenty (rate regulation).
  - 2. In applying this Ordinance to an Open Video System, "Grantee" shall be taken to refer to the open video system operator, "Cable System" to the Open Video System, "Franchise" to any authorization granted by the City to the Open Video System operator, and similar terms shall apply similarly.
- B. Application for Open Video System Authorization.
  - 1. A Person proposing to use Public Rights-of-Way to install devices for the operation of an Open Video System shall first obtain authorization from the City for such use. Such a Person may apply for such authorization by submitting an application containing:

- a. The name and address of the applicant and an identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant and Affiliates of the applicant, and all Persons with three percent or more ownership interest in the applicant and its Affiliates; the Persons who control the applicant and its Affiliates; all officers and directors of the applicant and its Affiliates; and any other business affiliation and Cable System ownership interest of each named Person.
  - b. A detailed description of the physical facilities the applicant proposes to place in public ways.
  - c. Any information that may be reasonably necessary to demonstrate compliance with the requirements of federal law and with this Section Thirty-five.
  - d. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the application meets all federal and state law requirements.
2. The City may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section Thirty-five.B.1.
  3. Upon application to the City for Open Video System authorization, the applicant shall pay to the City twenty-five thousand dollars. This payment shall be non-refundable and shall be used to offset in whole or in part any costs incurred by the City in granting the authorization.

C. Fee In Lieu of Franchise Fee.

An Open Video System operator shall pay to the City a fee in lieu of and at the same rate as the Franchise fee required in Section Eight.A of this Ordinance, pursuant to the procedures and conditions specified in Section Eight and generally herein.

D. Public, Educational, and Governmental Access Obligations.

An Open Video System operator shall be subject to obligations pertaining to Public, Educational, and Governmental Access pursuant to applicable law and to the requirements herein.

E. Right-of-Way Usage.

An Open Video System operator shall be subject to all requirements of state and local law regarding authorization to use or occupy the Public Rights-of-Way, except to the extent specifically prohibited by federal law. FCC approval of an Open Video System operator's certification pursuant to 47 U.S.C. § 573 shall not be taken to confer upon such operator any authority to use or occupy the Public Rights-of-Way that such operator would not otherwise possess.

**SECTION THIRTY-SIX. Severability.**

If any provision of this Ordinance, or the particular application thereof, shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining provisions, and their application, shall not be affected thereby.

**Approved: March 4, 2002**