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Chapter 9

CABLE COMMUNICATIONS

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\*Cross reference(s)--Businesses, ch. 8; utilities, ch. 29.

State law reference(s)--Powers of home rule charter cities, Mo. Const. art. VI, § 19(a).

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**ARTICLE I. NEWS-PRESS & GAZETTE  
COMPANY NONEXCLUSIVE FRANCHISE**

**Sec. 9-1. Grant of nonexclusive franchise to  
News-Press & Gazette Company.**

That the grant of a nonexclusive cable communications franchise to News-Press & Gazette Company, or its successors and assigns, be and hereby is, authorized.

(1969 Code, Sec. 7 1/2-1; G.O. 1149, 1-31-94)

**Sec. 9-2. Short title.**

This chapter shall be known and may be cited as the "St. Joseph Cable Communications Franchise Ordinance" hereinafter "franchise". (1969 Code, Sec. 7 1/2-2; G.O. 1149, 1-31-94)

**Sec. 9-3. Definitions.**

For the purpose of this chapter, the following terms, phrases, words, abbreviations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words or terms not defined herein shall be given the meaning set forth in the Cable Act.

*Access channels* shall mean those channels or portions thereof provided by the franchisee and available on the system at no cost to the user for local, nonprofit public, educational and government purposes as may be required by this franchise.

*Bad debt* shall mean amounts written off as uncollectible by the franchisee (or other payee), minus any recoveries with respect to such amounts previously written off by the franchisee (or other payee).

*Basic service* shall mean any service tier or level of cable service which includes the retransmission of local television broadcast signals.

*Cable act* shall mean the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 USC Section 521 et seq.), and any subsequent amendments thereto.

*Cable service or cable communication service* shall mean (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 of such video programming or other programming service.

*Cable communications system* shall mean a complex system of antennae, coaxial cables, optical fiber, wires, wave guides or other conductors, equipment or facilities designed, constructed or used for the purpose of providing cable service or other lawful services by receiving or distributing video, audio, voice or data signals to, from or among subscribers, users and other persons. The foregoing definition of cable communications system shall not be deemed to circumscribe the valid authority of any governmental body, including the city, to regulate the activities of any other cable communications system or provider of cable communication services.

*Channel* shall mean a band of frequencies in the electromagnetic spectrum, or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a video signal, an audio signal, a voice signal, or a data signal.

*City* shall mean the City of St. Joseph, Missouri, or its successors, in its present form, or in any later reorganized, consolidated or enlarged form.

*City council or council* shall mean the present governing body of the city or any future board constituting the legislative body of the city.

*Converter* shall mean an electronic device which converts signals to a frequency not susceptible to interference within the television or radio receiver of a subscriber, and with an appropriate channel selector which permits reception of signals transmitted by the franchisee.

*Educational channel* shall mean any channel provided by the franchisee on the system for educational purposes as provided in Section 9-16 hereof.

*FCC* shall mean the Federal Communications Commission, its designee or its successor.

*Franchise* shall mean and include any authorization granted hereunder to construct, operate and maintain a cable communications system in the franchise territory.

*Franchisee* shall mean the News-Press & Gazette Company, a Missouri corporation, and its subsidiaries and their lawful successors and assigns, to which a franchise under this chapter is hereby granted by the council.

*Franchise territory* shall mean all of the area within the city limits of the city as well as any area henceforth annexed thereto during the term of this franchise.

*Government channel* shall mean any channel provided by the franchisee on the system for governmental purposes as provided in Section 9-16 hereof.

*Gross revenues* shall mean all cash, credits, property of any kind or nature or other consideration received directly or indirectly by the franchisee, its affiliates, subsidiaries, parents and any person in which the franchisee has a financial interest, arising solely from or attributable solely to the sale or exchange of cable communication services or other lawful services by the franchisee within the franchise territory or in any way derived from the operation, use or lease of its system. The annual gross revenues shall be the basis for computing the franchise fee imposed pursuant to Section 9-7 of this franchise. gross revenues shall not include (1) any taxes on cable services or other lawful services furnished by the franchisee and imposed directly or indirectly on any subscriber or user by any city, state or other governmental unit and collected by the franchisee on behalf of such governmental unit, including the franchise fees payable hereunder, (2) the amount of any refunds given to a subscriber, (3) bad debt and (4) cash or other property received from subscribers in connection with promotional activities that is immediately forwarded to charitable organizations by the franchisee and for which the franchisee does not claim a charitable deduction for income tax purposes.

*Leased channel* shall mean a channel leased by the franchisee to permit the presentation and distribution of video or audio programming or other video or audio communications to subscribers for a specific fee.

*Local origination channel* shall mean any channel where the franchisee is the programmer and provides video programs to subscribers.

*Noncommercial subscriber* shall mean any individual person who elects to subscribe to, for any purpose, an other lawful service provided by the franchisee to such individual person's residential dwelling unit by means of or in connection with the system.

*Other lawful service* shall mean any service other than cable service or cable communication service which is provided through signals over the system, including, without limitation, burglar alarm, data or other electric intelligence transmission, voice transmission and home shopping service.

*Person* shall mean an individual person, firm, partnership, joint venture, society, organization, club, association, trustee, trust, corporation, company or organization of any kind; or any officers, agents, employees, designates or any kind of person representative of the above, in any capacity, acting either for himself, or for any other person, under either personal appointment or pursuant to law. "person" shall not include a municipal corporation.

*Pay television* shall mean the delivery to subscribers, over the system, of additional television signals for a fee or charge to subscribers over and above the charge for basic service, on a per-program, per-channel or other subscription basis.

*Programmer* shall mean any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded tapes or other storage media, to subscribers, by means of the cable communications system.

*Public Property* shall mean any public park, public grounds or public place and any other property to the extent public easements or public rights-of-way exist thereon, now or hereafter existing, and all extensions thereof and additions thereto, within the franchise territory.

*Residential dwelling unit* shall mean each home, house, structure or other dwelling that normally accommodates the living quarters of one (1) family, and each apartment, town-home or

condominium that normally accommodates the living quarters of one (1) family in any multiple-unit building or complex of buildings; provided, however, that if the owner of any such multiple-unit building or complex of buildings has not executed the franchisee's standard service agreement granting the franchisee the right of entry to such multiple-unit building or complex of buildings, then any such multiple-unit building or complex of buildings shall be considered a single residential dwelling unit.

*School* shall mean any educational institution, including primary and secondary schools, colleges and universities.

*Service tier* shall mean a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.

*Signal* shall mean any transmission of radio frequency energy or optical information.

*Street* shall mean the surface of and the space above and below any public street, avenue, boulevard, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, drive, bridge or tunnel now or hereafter existing, and all extensions thereof and additions thereto, within the franchise territory.

*Subscriber* shall mean any person who or which elects to subscribe to, for any purpose, a cable service provided by the franchisee by means of or in connection with the system.

*System* shall mean the cable communications system that is to be operated by the franchisee pursuant to this franchise.

*System outage* shall mean the absence of signals over the system, or the presence of signals of unacceptable signal quality as defined in Section 9-13(e) herein, that simultaneously affects more than one hundred (100) subscribers.

*User* shall mean a person utilizing a channel on the system and/or production facilities for purposes of production and/or transmission of signals to subscribers.

(1969 Code, Sec. 7 1/2-3; G.O. 1149, 1-31-94)

#### **Sec. 9-4. Grant of nonexclusive franchise.**

(a) *Rights and privileges of franchisee.* There is hereby granted by the city to the franchisee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets and public property now laid out or dedicated, and all extensions thereof, and additions thereto, in the franchise territory, poles, towers, wires, cables, amplifiers, antennae, underground conduits, manholes, conductors, fixtures and equipment necessary for maintenance and operation in the franchise territory of a cable communications system and in connection therewith, to furnish, render and sell cable service and other lawful service.

(b) *Nonexclusive franchise.* The right to use and occupy said streets for the purposes herein set forth shall not be exclusive, and the city reserves the right to grant a similar use of said streets and public property to any party at any time during the period of the franchise. The city will not authorize or permit another cable communications system to operate within the franchise territory on terms or conditions more favorable or less burdensome to the operator of such cable communications system than those applied to the franchisee pursuant to this franchise. If any such franchise is granted on terms more favorable or less burdensome to the franchisee thereof than those contained in this franchise, then the franchisee shall have the right to comply with such more favorable or less burdensome terms of such other franchise in lieu of compliance with the less favorable or more burdensome terms contained herein. If any cable communications system is constructed or operated within the franchise territory, and the operator of such cable communications system is not required to obtain a franchise from the city therefor, then the franchisee shall not be required to comply with any terms contained herein that are more burdensome or less favorable than any requirements imposed on the operator of such other cable communications system or governing the construction, operation, or repair of such other cable communications system.

(c) *Supersedes previous ordinance.* This franchise supersedes and wholly replaces any rights and liabilities presently existing between the city and the franchisee as a result of a special use permit granted to the franchisee by Special Ordinance 24683, on July 15, 1981, as amended, provided however, that any debts or amounts of

money presently due the city from the franchisee under the terms of said special use permit are not hereby discharged, but remain intact.

(d) *Term of franchise.* This franchise and the rights, privileges and authority hereby granted shall take effect and be enforced from and after final passage thereof, as provided by law, and after acceptance by the Franchisee as specified in Section 9-36 herein, and shall continue in force and effect for a term of 15 years, provided that within 180 days after the date of final passage of this franchise, the franchisee shall file with the city clerk its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing, duly executed and sworn to by or on behalf of the franchisee before a notary public or other officer authorized by law to administer oaths.  
(1969 Code, Sec. 7 1/2-4; G.O. 1149, 1-31-94)

**Sec. 9-5. Compliance with applicable laws.**

The franchisee shall, at all times during the life of the franchise, comply with all applicable federal, state and local laws and shall be subject to all lawful exercise of the police power by the city under such reasonable regulations as the city shall hereafter provide. Notwithstanding the foregoing, the material terms and provisions of this franchise may not be amended or modified in any respect by the city's adoption of any ordinance, resolution, rule, regulation or directive, except as expressly authorized in this franchise or as shall be allowed by applicable federal or state law.  
(1969 Code, Sec. 7 1/2-5; G.O. 1149, 1-31-94)

**Sec. 9-6. Franchise territory.**

The franchise is for the present territorial limits of the city and for any area henceforth added to the city during the term of this franchise. The franchisee acknowledges that the city, from time to time, may add additional land to the city limits by annexation to which the franchisee is obligated to serve under this franchise, subject to the line extension requirements of Section 9-11 hereof.  
(1969 Code, Sec. 7 1/2-6; G.O. 1149, 1-31-94)

**Sec. 9-7. Franchise fees.**

(a) *Fee payments to the city.* The franchisee shall pay to the city for the use of city streets,

public property and other facilities in the construction, maintenance and operation of the system and for the municipal supervision thereof during the life of the franchise herein granted, a sum equal to five (5%) percent of the annual gross revenues as defined in Section 9-3(q) herein. If the cable act is amended to allow franchising authorities the right to receive a franchise fee in excess of five percent (5%) of the cable operator's gross revenues derived from the operation of its cable system, then the city may raise the franchise fee payable hereunder to the maximum amount allowed by the cable act, as amended. If the amendment of the cable act does not specify a maximum franchise fee amount, then the franchise fee amount payable shall not exceed seven percent (7%) of the franchisee's annual gross revenues as defined in Section 9-3(q) herein. The franchise fee paid to the city by the franchisee pursuant to this section shall include any tax, fee or assessment of any kind imposed by the city on the franchisee solely because of its status as a cable operator. This franchise fee shall be paid by the franchisee in addition to: (i) any tax, fee or assessment of general applicability, (including any such tax, fee or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers), including, but not limited to, personal property taxes, sales taxes, use taxes or real estate taxes; (ii) any capital costs required by the franchise to be incurred by the franchisee for the government channel or any educational channel facilities; or (iii) any requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages.

(b) *Fee payment schedule.* The franchisee shall file with the city within 30 days after the end of each quarter year ending March 31, June 30, September 30 and December 31 during the period of the franchise, a report in a form acceptable to the city, approval of which shall not be unreasonably withheld, showing in detail the franchisee's gross revenues, as defined herein, for the immediately preceding calendar quarter. The report shall show the basis for computation of gross revenues and other relevant factors as may reasonably be required by the city. It shall be the duty of the franchisee to pay to the city at the time for filing such statement the quarterly portion of the franchise fee hereinabove prescribed.

(c) *Payment conditions.* The acceptance of any payment required hereunder by the city shall not be construed as an acknowledgement that the amount paid is a correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the city may have for additional sums due and payable. All franchise fee payments shall be subject to audit by the city for a period of five years after receipt thereof and further shall be subject to assessment or refund if the payment is found to be in error. In the event that said audit results in an assessment of an additional payment to the city, said additional payment shall be subject to interest from the date on which such payment was due and payable. Such interest shall be calculated on an annual basis upon the date on which notice is given of an incorrect payment and shall be at the city's current average investment rate. Any additional amount due the city as a result of the audit shall be paid within 30 days following written notice to the franchisee by the city, which shall include a copy of the audit report. Any additional amounts due the city at any time during the term of this franchise shall be collectible by the city in any action, upon refusal of payment by the franchisee, brought within ten (10) years after the expiration of this franchise.

(d) *Financial reporting.* The franchisee shall file annually with the city, no later than 90 days after the end of the franchisee's fiscal year, a financial report for the preceding 12 month period applicable to the operation of the franchisee's cable communications system serving the franchise territory. The report shall include either a complete set of audited financial statements, including a balance sheet, income statement, statement of retained earnings, statement of cash flows, notes to the financial statements, and an auditor's opinion, or shall include the limited financial information specified in Section 9-7(e) and the following statement, "The financial position of the franchisee meets or surpasses all the tests specified in Section 9-7(f) of the franchise". The financial statements shall be completed by an independent certified public accountant and shall be certified as correct by an authorized officer of the franchisee. For a period of one (1) year after the franchisee has filed its annual financial report, the franchisee shall allow the city's independent auditor access to all of the franchisee's financial records, including, but not limited to, balance sheets, income statements, statements of retained earnings, statements of cash flow, billings, any related notes and any

other financial information necessary to verify the requirements of Section 9-7(f), but only if the city's independent auditor agrees in writing in advance of obtaining such access that it will not use such financial records for any purpose other than verifying that the franchisee has met or surpassed the tests specified in that Section. The independent auditor's report to the city shall consist only of statements that the franchisee has met financial tests specified in Section 9-7(f) herein and shall not include any underlying financial information. If the independent auditor is unable to confirm that the franchisee has met the financial tests specified in Section 9-7(f) herein, the franchisee shall submit a complete set of audited financial statements as specified above. The city will treat the report of the independent auditor in a confidential manner to the fullest extent possible.

(e) *Limited financial information.* In the event the franchisee elects not to submit a complete set of financial statements as specified in Section 9-7(d) above, but instead elects to provide only limited financial information and a statement to the city that it meets or surpasses the financial tests specified in Section 9-7(f) below, then the franchisee shall provide the following information:

- (1) Number of subscribers. The franchisee shall provide the city a five (5) year history of the average annual or the year end number of basic service and pay television subscribers.
- (2) System revenues. The franchisee shall provide the City a five (5) year history of system revenue. Such history shall include a reasonably detailed breakdown of system revenue by source.
- (3) Revenue per subscriber. The franchisee shall provide the city a five (5) year history of system revenue per subscriber. System revenue per subscriber shall be calculated by dividing system revenue by the number of subscribers and shall be provided in reasonable detail.
- (4) Debt Covenant Letters. The franchisee shall provide copies of all debt covenants and restrictions and other relevant documentation relating to the franchisee's outstanding debt. The franchisee shall provide certification that the franchisee's



financial position meets any and all debt covenants, restrictions, or conditions. The city will treat such debt letters and documentation in a confidential manner to the fullest extent possible.

- (5) Audit Opinion. The franchisee shall certify to the city that its audit opinion letter for the franchisee's latest fiscal year was not qualified. Such opinion shall be commonly termed a clean opinion and without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit.

(f) *Financial tests*. In the event the franchisee elects not to submit a complete set of financial statements as specified in Section 9-7(d) above, but instead elects to provide only limited financial information and a statement to the city that it meets or surpasses the tests specified in this subsection, then the franchisee's financial position and operations in the franchise territory shall meet or surpass the following tests as of the end of the fiscal year of the franchisee for which the report under Section 9-7(d) is to be filed:

- (1) Coverage ratio. The franchisee shall have a coverage ratio that is not less than two to one (2:1);
- (2) Debt to media cash flow ratio. The franchisee shall have a debt to media cash flow ratio that is not greater than five to one (5:1); and
- (3) Retained earnings. The franchisee shall have retained earnings of not less than \$25,000,000.00.

(g) *Financial definitions*. For purposes of this section, the following terms shall have the meanings set forth below:

- (1) Consolidated interest expense shall mean, for such fiscal year, the aggregate of all interest incurred in respect of any debt of the franchisee or any consolidated subsidiary, as imputed or actual interest, however designated, determined on a consolidated basis for such fiscal year.
- (2) Consolidated interest income shall mean, for such fiscal year, the aggregate of all interest earned by the franchisee or any consolidated subsidiary in respect of debt to the franchisee and any consolidated

subsidiary as imputed or actual interest, however designated, determined on a consolidated basis for such fiscal year.

- (3) Consolidated subsidiary shall mean at any date any subsidiary corporation or other entity the accounts of which would be consolidated with those of the franchisee in its consolidated financial statements as of such date.
- (4) Coverage ratio shall mean, at the end of such fiscal year, the ratio of (i) media cash flow for such fiscal year to (ii) consolidated interest expense for such fiscal year.
- (5) Debt of any person shall mean, at the end of such fiscal year, without duplication, (i) all obligations for borrowed money, (ii) all obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business (and payable no more than one hundred eighty (180) days from the date of incurrence thereof) and unamortized film air rights purchases, (iv) all obligations as lessee under capital leases, (v) all obligations under take or pay or similar contractual obligations, (vi) all obligations to reimburse or indemnify the issuer of a letter of credit or guarantee for drawings or payments thereunder, (vii) all debt of others secured by a lien on any asset of such person, whether or not such debt is assumed by such person, and (viii) all debt of others guaranteed by such Person.
- (6) Debt to media cash flow ratio shall mean, at the end of such fiscal year, the ratio of (i) Debt of the franchisee and the Consolidated subsidiaries, determined on a consolidated basis, as of such date, to (ii) media cash flow for such fiscal year.
- (7) Media cash flow shall mean, for such fiscal year, (1) the sum of (i) pretax income (or deficit, as the case may be) of the franchisee and the consolidated subsidiaries determined on a consolidated basis for such fiscal year, (ii) (to the extent taken into account in determining

the pretax income (or deficit described in clause (i)) consolidated interest expense for such fiscal year and (iii) (to the extent taken into account in determining the pretax income (or deficit) described in clause (i)) depreciation, depletion and amortization of properties and other non-cash charges incurred in the ordinary course of business of the franchisee and the consolidated subsidiaries determined on a consolidated basis for such fiscal year, minus (2) the sum of (i) consolidated interest income for such fiscal year, (ii) the aggregate of all extraordinary gains on sales of properties of the franchisee or any consolidated subsidiary for such fiscal year, (iii) earnings or income for such fiscal year of unconsolidated subsidiaries or persons (other than the franchisee) which are not subsidiaries of the franchisee (other than cash dividends received by the franchisee or a consolidated subsidiary) and (iv) (unless already taken into account in determining the pretax income or deficit described in clause (1)(i)), that portion of the earnings or income of consolidated subsidiaries attributable to minority interest therein for such fiscal year, all determined on a consolidated basis; provided that, for purposes of calculating media cash flow for such fiscal year, (I) any person who was not a consolidated subsidiary at the beginning of such fiscal year but was a consolidated subsidiary at the end of such fiscal year shall be deemed to have been a consolidated subsidiary for the entire fiscal year, and (II) any Person who was a consolidated subsidiary at the beginning of such fiscal year but was not a consolidated subsidiary at the end of such fiscal year shall be deemed to have not been a consolidated subsidiary for the entire fiscal year.

- (8) Retained earnings shall mean the sum of the franchisee's accumulated historical net income and net losses minus declared dividends.

(h) *Payments upon termination.* In the event this franchise should be terminated or forfeited prior to the expiration date provided herein, the franchisee shall immediately submit to the city a financial statement showing the gross revenues of

the franchisee for the time elapsed since the last period for which the franchisee has paid the city the required percentage of annual gross revenues and the franchisee shall pay to the city not later than thirty (30) days following the termination of the franchise a like percentage of such gross revenues for such period.

(i) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures outlined in Section 9-18 of this franchise.

(1969 Code, Sec. 7 1/2-7; G.O. 1149, 1-31-94)

### **Sec. 9-8. Not franchise fees.**

(a) *Additional payments not franchise fees.* The franchisee expressly acknowledges and agrees that the franchise fee payments to be made pursuant to Section 9-7 shall be made in addition to payments for (i) any tax, fee or assessment of general applicability that the franchisee shall be required to pay to the city or to any state or federal agency or authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers; (ii) any capital costs required by the franchise to be incurred by the franchisee for the government channel or any educational channel facilities; or (iii) any requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages, all of which shall be separate and distinct obligations of the franchisee.

(b) *Precedence of payments.* The franchisee expressly acknowledges and agrees that the franchise fee payments due from the franchisee to the city pursuant to Section 9-7 hereof, shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be paid or supplied by the franchisee pursuant to the franchise.

(c) *Deduction of franchise payments from taxes.* The franchisee shall not have or make any claim for any deduction or other credit and shall not apply or seek to apply all or any part of the amount of the compensation or other payments to be made by the franchisee to the city pursuant to this franchise from or against (i) any city tax, fee

or assessment of general applicability, (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); (ii) any capital costs required by the franchise to be incurred by the franchisee for the government channel or any educational channel facilities; and (iii) any requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages.

(d) *Deduction of taxes from franchise payments or other payments.* The franchisee shall not apply or seek to apply all or any part of the amount of any city or other governmental tax, fee or assessment of general applicability, (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers), as a deduction or other credit from or against any of the compensation or other payments to be made by the franchisee to the city under this franchise, each of which shall be deemed to be separate and distinct obligations of the franchisee, including those related to capital costs required by the franchise to be incurred by the franchisee for the government channel or any educational channel facilities and those requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages.

(e) *Liquidated damages.* In the event the franchisee applies or seeks to apply all or any part of the amount of any franchise fee payments as a deduction or other credit, from or against any compensation obligations, as referenced above in subsections (c) and (d), then the city may liquidate damages as specified in Section 9-18 herein.

(1969 Code, Sec. 7 1/2-8; G.O. 1149, 1-31-94)

### **Sec. 9-9. Use of streets and poles.**

(a) *Interference with persons and improvements.* The system and its poles, wires, and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger the lives of persons, or unreasonably interfere with any improvements the city may

deem proper to make, or unnecessarily hinder or obstruct the free use of the streets or other public property.

(b) *Minimum interference with public ways.* All transmission and distribution structures, lines and equipment erected by the franchisee within the Franchise Territory shall be located so as not to cause unreasonable interference with the proper use of streets and other public property or the private property of property owners who adjoin any of the said streets or other public property.

(c) *Erection, removal and common uses of poles.*

- (1) No poles or other wire-holding structures shall be erected by the Franchisee without prior approval of the city with regard to location, height, types, and any other pertinent aspect, which approval shall not be withheld unreasonably upon a showing of need by the franchisee. All such poles or structures shall be removed or modified by the franchisee at its own expense whenever the city reasonably determines that the public convenience would be enhanced thereby (other than in connection with the construction or operation of a cable communications system by the city or any agency or affiliates of the city).
- (2) Where poles or other wire-holding structures already existing for use in serving the franchise territory are available for use by the franchisee, but it does not make arrangements for such use, the City may require the franchisee to use such poles and structures if it reasonably determines that the public convenience would be enhanced thereby and the terms of the use available to the Franchisee are just and reasonable.
- (3) Where a public utility serving the franchise territory desires to make use of the poles or other wire-holding structures of the franchisee, but agreement thereof with the franchisee cannot be reached, the city may require the franchisee to permit such use for such consideration and upon such terms as the city shall determine to be just and reasonable, if the city reasonably determines that the use would

enhance the public convenience and would not unduly interfere with the franchisee's operations.

- (4) Subject to the availability of space thereon, the city shall have the right during the life of the franchise to install and maintain free of charge upon the poles or equipment of the franchisee any wire, fixture or equipment necessary for a police or fire alarm system, traffic signal, interconnection network, bridge detection monitoring system, data transmission service or telemetry service for noncommercial use solely by the city and its agencies. The franchisee shall cooperate fully with the city and shall provide technical assistance regarding the placement of such wires, fixtures and equipment at no charge to the city, but the franchisee shall not be required to erect such wires, fixtures and equipment at its expense.

(d) *Relocation of the facilities.* In the event that at any time during the period of this franchise the city shall alter or change the grade of any street or require the relocation or altering of the franchisee's system due to a compelling public interest, (other than the construction or operation of a cable communications system by the city or any agency or affiliate of the city), the franchisee, upon reasonable notice by the city, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(e) *Movement of facilities.* The franchisee 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, raising or lowering of wires shall be paid by the person requesting the same, and the franchisee shall have the authority to require such payment in advance. The franchisee shall be given not less than five (5) business days advance notice to arrange for such temporary wire changes.

(f) *Placing of cable underground.* The placement of cables underground is encouraged. In any event, cables passing under any street shall be installed in underground conduit. Previously installed aerial cable shall be placed underground in concert with electrical and telephone utilities

unless this requirement is waived by the city. The franchisee shall be responsible for placing new cable underground in areas where telephone and electric utilities are underground at its own expense unless this requirement is waived by the city. The city shall advise the franchisee of all pending changes from aerial to underground utility installations of which it is aware. In the event that telephone or electric utilities are reimbursed by the city for the placement of cable underground or the movement of cable, the franchisee shall be reimbursed upon the same terms and conditions as the telephone or electric utilities. In the event an underground installation is required and the ground is frozen, saturated, or otherwise unable to immediately facilitate underground installation, such installation shall be performed on a temporary basis in compliance with all federal, state and local rules, regulations, codes or other generally applicable standards. As soon as conditions change to permit proper underground installation of the cable, the franchisee shall immediately, and in no event later than thirty (30) days after such conditions have changed to allow underground installation, undertake all necessary steps to install the cable underground pursuant to the terms and conditions of this franchise.

(g) *Tree trimming.* The franchisee shall not remove any tree or trim any portion, either above, at or below ground level, of any tree on public property within the franchise territory without the prior consent of the city, which consent shall not be unreasonably withheld. The city shall have the right to do the trimming requested by the franchisee, and the franchisee shall reimburse the city for the customary and reasonable costs of such trimming. If such trimming is performed by the franchisee, the franchisee shall be responsible and shall defend and hold the city harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

(h) *Construction codes and permits.*

- (1) The franchisee shall obtain all required permits from the city before commencing any work requiring a permit, including the opening or disturbance of any street or public property within the city. The Franchisee shall strictly adhere to all building and zoning codes currently or hereafter applicable to the construction, operation or maintenance of the system.

- (2) The construction and maintenance of the system shall be in accordance with the provisions of The National Electrical Code of the National Fire Protection Agency and The National Electrical Safety Code of the Institute of Electrical and Electronic Engineers, Inc., and such applicable governmental resolutions and regulations affecting electrical installations, which may be presently in effect, or hereafter adopted or amended.
- (3) All installations of equipment with respect to the system shall be of a permanent nature, durable, installed in accordance with good engineering practice and of sufficient height to comply with all existing governmental regulations, ordinances, resolutions and state laws so as not to interfere in any manner with the rights of the public or individual property owners, and shall not interfere unduly with the travel and use of streets and public property by the public during the construction, repair and removal thereof and shall not unduly obstruct or impede traffic.
- (4) The city shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the franchise and applicable provisions of federal, state and local law.
- (5) Any and all streets and public property which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the system shall be promptly repaired by the franchisee, at its expense, to a condition as good as that prevailing prior to the franchisee's construction and as specified in any relevant permit.
- (i) *Maintenance of plans and records.* The franchisee shall at all times make and keep full and complete plans and records showing the exact location of all system equipment installed or in use in streets or other public property in the franchise territory. The franchisee shall permit any duly authorized representative of the city to examine and transcribe any and all maps of the system maintained by the Franchisee. The city will treat such maps in a confidential manner to the fullest extent possible.
- (j) *Removal of system.* At the expiration of the term of which the franchise is granted, or upon its termination, cancellation or revocation as provided for herein, the city shall have the right to require the franchisee to remove, at its own expense, all above-ground portions of the system from all streets and public property.
- (k) *Abandonment.* The franchisee may not abandon the above-ground portion of its system without having given three (3) months prior written notice to the city. Further, the franchisee may not abandon the above-ground portion of its system without compensating the city for damages resulting from the abandonment. The amount of damages resulting from abandonment may be determined by the provisions of Section 9-39 related to arbitration.
- (l) *Street vacation or abandonment.* In the event any street or public property or portion thereof used by the franchisee shall be vacated by the city or the use thereof discontinued by the franchisee during the term of this franchise, the franchisee shall, at the franchisee's expense, forthwith remove the above-ground portion of its facilities therefrom unless specifically permitted by the city to continue the same, and on the removal thereof restore, repair or reconstruct the area where such removal has occurred, and place the area where such removal has occurred to a condition similar to that existing before such removal took place. In the event of failure, neglect or refusal of the franchisee, after 30 days' notice by the city, to remove such facilities or to repair, restore, or reconstruct the area where such removal has occurred, the city may do such work or cause it to be done and the reasonable cost thereof shall be paid by the franchisee as directed by the City or collected by the city as permitted and specified in Section 9-18. If the franchisee disputes that the amount that the city directs it to pay represents the reasonable cost of such work, then the reasonable cost thereof may be determined by the provisions of Section 9-39 related to arbitration.
- (m) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures referenced in Section 9-18 of this franchise.

(1969 Code, Sec. 7 1/2-9; G.O. 1149, 1-31-94)

**Sec. 9-10. System upgrade.**

(a) *System rebuild.* On or before the fourth anniversary of the effective date of this franchise, the franchisee shall complete a fiber-optic rebuild of the system so that:

- (1) The system in its entirety uses at least four hundred fifty (450) Mhz equipment of high quality and reliability capable of carrying at least sixty (60) channels of capability/capacity. The franchisee shall use a fiber to the feeder design. The fiber optic technology will integrate into the system in a manner that permits the franchisee to take full advantage of the benefits of that technology, including increased reliability, improved system performance, and advanced service capabilities.
- (2) There will be operational return paths consisting of all equipment required to get a signal from the access points for the government channel(s) and educational channel(s) described in Section 9-16 hereof to the system's headend.
- (3) The franchisee shall use equipment generally used in high-quality, reliable, modern systems of similar design.
- (4) Equipment at the headend of the system will develop signals of high quality throughout the service area of the system.

(b) *Plan submission.* With its acceptance of the Franchise, the Franchisee shall submit a reasonably detailed preliminary System design and construction plan to the City in a form acceptable to the City, which acceptance shall not be unreasonably withheld, including a timetable for construction and the location and installation plans of each part of the network showing the order in which areas within the Franchise Territory will be rebuilt and activated. The Franchisee shall submit to the City updated, amended or supplemented design and construction plans on a quarterly basis until the rebuild of the System is complete. The construction plan so submitted, and as updated, amended or supplemented from time to time, shall be subject to approval by the City, which shall not be unreasonably withheld, for the

purpose of ensuring compliance by the Franchisee with the requirements contained in subsection (a) hereof, shall be incorporated as part of this Franchise and shall become a condition of this Franchise. The Franchisee shall notify the City promptly in writing of the completion of the rebuild of the System. The City will treat the preliminary system design and construction plan and final system plans in a confidential manner to the fullest extent possible.

(c) *Commencement of system rebuild.* The franchisee shall commence the proposed rebuild of the system in a timely manner. For the purposes of this franchise, commencement of system rebuild or system reconstruction shall mean the placement of fiber optic cable, the non-routine replacement, removal, or change of integral system components such as amplifiers, or design and planning work clearly required in connection with the upgrade of the franchisee's system. A timely manner shall mean commencement of work in a fashion avoiding any delay within the reasonable control of the franchisee. Such delays shall not include any delay caused by the financial condition of the franchisee but may include delays due to such items as the unavailability of fiber optic cable.

(d) *Minimal disruption.* The franchisee will construct and rebuild the system in such a way as to minimize disruption to subscribers to the extent reasonably possible.

(e) *Performance bond.*

- (1) Within 180 days after the award of this franchise, the franchisee shall obtain and maintain at its cost and expense, and file with the city clerk, a performance bond from a company authorized to do business within the State of Missouri and found acceptable by the city attorney in the amount of \$500,000.00 to guarantee the timely construction and full activation of the System.
- (2) There shall be recoverable by the city, jointly and severally, from the principal and surety, all damages, losses or costs suffered by the city, as a result of the failure of the franchisee to satisfactorily complete the system upgrade pursuant to the terms and conditions outlined in Subsections (a)-(c) above.

- (3) Any extension to any prescribed time limit must be authorized by the city. Such extension shall be authorized only when the city finds that such extension is necessary and appropriate due to causes beyond the control of the franchisee.
- (4) The performance bond shall be terminated only after the city finds that the franchisee has satisfactorily completed the system upgrade pursuant to the terms and conditions outlined in subsections (a)-(c) above.
- (5) The rights reserved by the city with respect to the performance bond are in addition to all other rights of the city, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such performance bond shall affect any other right the city may have.
- (6) The performance bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the city, by registered mail, of a written notice of intent to cancel or not renew".

(f) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures outlined in Section 9-18 of this franchise.

(1969 Code, Sec. 7 1/2-10; G.O. 1149, 1-31-94)

### **Sec. 9-11. Line extensions.**

(a) *Standard extension requirements.* The franchisee is hereby authorized to extend the existing system within the franchise territory. A service obligation shall occur whenever the franchisee shall receive requests for cable service from at least 15 potential subscribers who are within 2,640 cable feet of its trunk cable and wholly or partly located within 1,320 cable feet of each other or when there are at least 25 potential subscribers per system mile. Said connection shall be completed solely for the usual connection and service fees for all subscribers. Cable service shall also be provided at the standard connection charge upon request to potential subscribers if the connection to the subscriber would require no

more than a 150 foot aerial drop line. The 2,640 feet shall be measured in extension length of the franchisee's cable required for cable service located within any street or public property and shall not include the length of the necessary service drop to the potential subscriber's home or premises. Measurement of the mile to determine the number of potential subscribers per mile shall commence from that point on the existing system from which construction of the extension will commence within the street or public property and shall not include the length of any necessary service drop to potential subscriber's homes or premises. No person in the franchise territory shall be arbitrarily refused service.

(b) *Non-standard extension costs.* In recognition of the capital costs involved in unusual circumstances, including, without limitation, when the distance for a service drop from the distribution cable to the connection of cable service to a subscriber is more than 150 feet or when a subscriber density exists at less than the density specified above, cable service shall be made available to potential subscribers desiring such service as a non-standard extension, provided each subscriber who requests such an extension shall pay for the costs of materials, labor, easements and permits for distances beyond the existing system. In conjunction with each non-standard extension proposed under this section, the franchisee shall document the actual cost of the extension and shall provide for non-personal disclosure of such documentation at its office in the city.

(c) *Non-standard extension procedure.* When the estimated cost of construction of a non-standard extension is determined, each potential subscriber desiring cable service shall provide the franchisee with a deposit equal to the estimated cost of construction divided by the total number of potential subscribers desiring service. The deposit shall be amended or refunded accordingly when the actual cost of construction is determined. The franchisee shall proceed with construction promptly, barring events beyond its control.

(d) *Non-standard extension cost recovery.* The franchisee shall refund to current or past subscribers in an area served by a non-standard extension, as herein defined, all non-standard extension costs paid by such subscribers when the minimum density requirements of subsection (a) have been met in the area. Such refunds are not

otherwise limited, but may be made at the franchisee's discretion to only those subscribers who paid shares of non-standard extension costs and who still own or occupy the affected residential dwelling units or other structure in the area, and when the minimum density requirements in the area are met within five (5) years.

(e) *Additional extension.* Nothing herein shall be construed to prevent the franchisee from serving areas not covered under this section or this franchise upon agreement with developers, property owners or residents. Nothing in this section shall prohibit the franchisee and real estate developers from entering into agreements whereby entire new housing developments shall be pre-wired for efficient expansion of the system. Nothing in this section shall be construed to prohibit the reduction or waiving of installation, extension, or connection costs or charges in conjunction with promotional campaigns or efforts of the franchisee to attract new subscribers.

(f) *Service to public buildings.*

- (1) The franchisee, upon written request of the city, shall provide without charge one service drop to the following buildings:

Benton High School  
 Bishop LeBlond High School  
 Buchanan County Courthouse  
 Bus Barn  
 Central Fire Station  
 Central High School  
 City Hall  
 Civic Arena  
 Coleman Elementary School  
 Edison Elementary School  
 Eugene Field Elementary School  
 Fire Stations 4, 5, 6, 8, 9, 10, 11 and 12  
 Floyd Building  
 George Bode Middle School  
 Hall Elementary School  
 Harry S. Truman Middle School  
 Horace Mann Building  
 Hosanna Christian School  
 Hosea Elementary School  
 Humboldt Elementary School  
 Hyde Elementary School  
 Interfaith Community Services Deer Park Day Care Center  
 John J. Pershing Elementary School  
 Joyce Raye Patterson Senior Citizens

Center  
 Lafayette High School  
 Lake Contrary Elementary School R III  
 Law Enforcement Center  
 Lindbergh Elementary School  
 Mark Twain Elementary School  
 Missouri Theater  
 N.S. Hillyard Technical School  
 Neely Elementary School  
 Noyes Elementary School  
 Parkway Elementary School  
 Patee Hall  
 Pickett Elementary School  
 River Bluffs Regional Library Belt Branch  
 River Bluffs Regional Library Carnegie Branch  
 River Bluffs Regional Library Central Branch  
 River Bluffs Regional Library Washington Park Branch  
 Robidoux Middle School  
 St. Francis Xavier School  
 St. James School  
 St. Joseph Cathedral School  
 St. Joseph School District Adult Basic Education Learning Center  
 St. Patrick School  
 Seventh Day Adventist School  
 Skaith Elementary School  
 Spring Garden Middle School  
 Trinity Lutheran School  
 Webster Elementary School

- (2) Within five (5) years from the effective date of this franchise, the Franchisee, upon written request of the city, shall provide without charge one service drop to the following buildings, provided that the city, in its reasonable discretion, can demonstrate that an operational need exists:

Animal Shelter  
 Krug Park Castle  
 Muchenberger Center  
 Northwest Missouri Community College  
 Waste Water Treatment Plant

- (3) The franchisee, upon written request of the city, shall also provide without charge one service drop to any current or future municipal building, courthouse, public library, public school or parochial school located within the franchise territory and within 250 feet of a trunk cable.



- (4) If more than one outlet is required in any of the aforesaid locations, or if the franchisee has been requested to change the location of the original outlet provided in any such building, then the franchisee shall install such other outlets upon reimbursement for the cost of time and materials. The distribution of the cable facilities inside such buildings shall be the responsibility of the building owner except as specified in Section 9-17(a). In no event shall there be a monthly service charge at such locations.

(g) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures outlined in Section 9-18 of this franchise.

(1969 Code, Sec. 7 1/2-11; G.O. 1149, 1-31-94)

**Sec. 9-12. Technical performance and standards.**

(a) *Design, construction and operation to be in compliance with FCC requirements.* The system shall be designed, constructed and operated so as to meet those technical standards promulgated by the FCC relating to cable communications systems contained in the Code of Federal Regulations, Title 47, Sections 76.601 to 76.617, as amended, or as may, from time to time, be amended. The results of tests required by the FCC or this franchise shall be filed with the city clerk, at the city's request, within ten (10) days of completion. Copies of all reports or other documents required to be filed with the FCC shall also be filed with the city, at its request. The franchisee shall maintain and make available for public inspection at its office in the city (Section 9-13(a)(1)) a file containing the results of all tests and reports.

(b) *Standards to be in compliance with applicable laws and regulations.* All performance and technical standards governing construction, reconstruction, erection, installation, operation, testing, use, maintenance and dismantling of the system provided for herein shall be in accordance with all applicable FCC and other federal, state and local laws and regulations; provided however, that if the FCC discontinues promulgation or enforcement of such technical specifications, said specifications shall become a part of this franchise and shall remain in force and effect until the city exercises

any rights it may have to require such standards as it shall deem necessary.

(c) *Test and compliance procedures.*

(1) The franchisee shall perform, periodically at intervals no greater than once a year, necessary tests to verify compliance with all applicable technical standards. These tests shall be conducted at six (6) system extremity test points and shall include, but not be limited to: Summation sweep response across the entire band; signal-to-noise ratio measurements on three (3) channels; and subjective picture quality evaluations on all active channels. The tests shall, upon request of the city, be witnessed by representatives of the city.

(2) If one or more of the locations where system performance is tested shall fail to meet applicable performance standards, the Franchisee shall immediately, and in no event later than twenty (20) days from the date of testing, complete corrective measures and report to the City the corrective measures so taken. The test shall then be repeated in each location where a problem is detected. The franchisee shall bear all costs and expenses, including the hiring of independent testing services and any equipment and facilities required, for all such testing.

(d) *Special testing.* At any time after commencement of cable service to subscribers and at the city's discretion, the city may require the franchisee to perform additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's drop in order to demonstrate compliance by the franchisee with technical standards applicable to the system. Such additional tests, which may include, but are not limited to, video carrier levels on each activated channel, low frequency distortion assessment, intermodulation distortion assessment, Rf signal leakage evaluation, and signal quality measurement at system headend of satellite services, locally originated broadcasting, and area broadcast stations, shall be required only on the basis of complaints received from subscribers or other evidence indicating an unresolved controversy or significant noncompliance with applicable technical

standards and such tests will be limited to the particular matter in controversy. The city shall endeavor to arrange its requests for such special tests so as to minimize hardship or inconvenience to the franchisee or to the Subscriber. The franchisee shall bear all costs and expenses, including the hiring of independent testing services and any equipment and facilities required for the special testing referenced in this section.

(e) *Signal quality.* With respect to video signals, the system shall produce a picture or signal on all channels for all subscribers in black and white or color, depending upon whether color is being cablecast, that is undistorted and free from internally generated ghost images, graininess or snow, vertical, horizontal or diagonal interference lines and without degradation of color fidelity, provided that the subscriber has a television receiver of average quality that is functioning properly. With respect to audio signals, the system shall produce a sound that is undistorted from its reception quality and of consistent loudness level on a television receiver of average quality that is functioning properly, subject to customary variations in signal strength of satellite-delivered and broadcast programming. The franchisee shall use its best efforts to match the audio levels of surrounding programming for any commercials or advertising inserted in such programming by the franchisee.

(f) *Annual operational status reports.* The franchisee shall provide annual reports to the city of the following statistical information: (1) number of service requests received from subscribers seeking repair, maintenance, or related action from the franchisee; (2) breakdown by type of service complaints received; (3) breakdown by cause of service problems experienced on the system; (4) breakdown by type of response or resolution of service complaints received; (5) subscribers added, each service tier and each premium channel; and (6) subscribers disconnected, each tier and each premium channel. Such reports shall be analyzed by the city and a copy of the analysis shall be made available to the franchisee upon request.

(g) *Liquidated damages.* Failure of the franchisee to comply with any of the provisions of this section shall result in the assessment of liquidated damages as specified in Section 9-18. (1969 Code, Sec. 7 1/2-12; G.O. 1149, 1-31-94)

**Sec. 9-13. Subscriber service.**

(2/1/08)

- (a) *Subscriber complaints.*
- (1) Twenty-four hour complaint office. The franchisee shall maintain an office in the city, which shall be open at least 40 hours a week, including at least five (5) non-standard business hours on weekday evenings after 5:00 p.m. and at least four (4) hours on the weekends, having a publicly listed telephone number, and be so operated that complaints and requests for repairs or adjustments may be received on a twenty-four-hour basis.
- (2) Complaint procedures. The franchisee shall establish procedures for receiving, acting upon and resolving subscriber complaints. The franchisee shall furnish notice of such procedures to each subscriber to cable service and noncommercial subscriber to other lawful service at the time of initial subscription to the system.
- (3) Subscriber service records. Subscriber service records shall be maintained at the franchisee's subscriber service office in the city and shall list all complaints and requests concerning signal quality or interruption of cable service to subscribers or other lawful service to noncommercial subscribers. Such records shall include the time and date on which any such complaint or request was received, the disposition of such complaint or request and a description of the actions taken by the franchisee to resolve such complaint or request, including date and time. Complaints and requests concerning maintenance, employee courtesy, billing and safety of cable service to subscribers or other lawful service to noncommercial subscribers shall be maintained by the franchisee in accordance with its normal operating procedures. The city shall have the right to request the subscriber service records of an individual subscriber at any time for a period of 12 months, provided, however, that the franchisee shall not be obligated to provide such service records to the city if it can conclusively demonstrate that doing so would violate applicable law, including the cable act or FCC regulations, regarding disclosure of

personally identifiable information of a subscriber by producing copies of the relevant sections or provisions.

- (4) Franchisee's initial response. The franchisee shall provide an initial response to all subscriber complaints relating to the signal quality or to interruption of cable service to subscribers or other lawful service to noncommercial subscribers or requests for maintenance within 24 hours after the receipt of the complaint or request. This initial response shall include a full explanation of the subscriber's complaint or request and a full explanation of the franchisee's proposed actions in response.
- (5) Complaint resolution. Any verbal, telephonic or written subscriber complaint relating to signal quality or to interruption of cable service to subscribers or other lawful service to noncommercial subscribers shall be resolved in accordance with FCC standards, as well as those set forth in this franchise, within 72 hours, provided, however, that if corrective action cannot be completed within 72 hours, the franchisee shall notify the city of the same and be afforded the opportunity to request an extension of time to resolve the complaint.
- (6) Rebate or credit for failure to correct subscriber complaints within specified period of time. In the event that subscriber service complaints relating to signal quality or interruption of cable service to subscribers or other lawful service to noncommercial subscribers are not resolved to meet FCC standards or the terms of this franchise during a 72 hour period, or such extension of time as the city may approve, the subscriber or noncommercial subscriber, upon request, shall be entitled to a rebate or credit of one-fifteenth (1/15) of his normal monthly service charge for each day or part thereof between the end of the applicable time period and the time cable service or other lawful service is restored to set standards. This provision shall not apply if such delay is occasioned because of an act of God, strike, national emergency, or any other extraordinary

circumstance beyond the control of the franchisee. This provision shall not apply to cable service requests or complaints pertaining to television set malfunction or other breakdowns not related to the operation of the cable communications system.

(b) *General service provisions.*

- (1) Service response. The franchisee shall maintain a sufficient repair force of technicians to render efficient service, make repairs promptly and interrupt cable service to subscribers or other lawful service to noncommercial subscribers only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system. The franchisee shall make every reasonable effort to perform system service repair and maintenance at a time convenient to the subscriber and noncommercial subscriber and in a timely manner and shall provide subscribers to cable service and noncommercial subscribers to other lawful service, upon request, with either a time specific appointment or a pre-designated block of time not to exceed four (4) hours for any service call or installation. The franchisee may require that a subscriber or noncommercial subscriber, or some other person of suitable age and discretion, be present at the time of service, repair or maintenance. One (1) months credit for basic service shall be provided to individual subscribers to cable service or noncommercial subscribers to other lawful service for each missed appointment or time block if the subscriber or noncommercial subscriber is not contacted by the franchisee in advance. For purposes of this subsection, an appointment or time block shall not be considered missed if the franchisee requirements regarding the presence of a subscriber, noncommercial subscriber or some other person of suitable age and discretion are not met. Work orders revealing that the franchisee's employee or contractor appeared for an appointment or time block as described in the preceding sentence shall be presented to

the city and considered as evidence that an appointment or time block was not missed.

- (2) Installations. The franchisee shall provide at least nine (9) non-standard business hours per week of extended installation and repair. Once the system rebuild has been substantially completed, all normal cable service installations to subscribers or other lawful service installations to noncommercial subscribers must be made within seven (7) business days, unless otherwise requested by the subscriber or noncommercial subscriber.
- (3) Natural disasters. Subscribers to cable service or noncommercial subscribers to other lawful service shall not be required to replace or be liable for the costs of the franchisee's equipment, including but not limited to, wiring, conduit, cable outlet hardware, converters, and remote control devices, that are damaged, destroyed or lost in natural disasters such as fire, flood, tornado or earthquake.

(c) *Subscriber information.* The franchisee shall provide to the city and to all new subscribers to cable service or to all new noncommercial subscribers to other lawful service, and at least once a year to existing subscribers to cable service or to existing noncommercial subscribers to other lawful service, written subscriber service information which shall include, but not be limited to, the procedures for initiating subscriber service complaints, including the telephone number and contact person with the city who may assist in the resolution of complaints, programming services, rates, and charges for all services, including billing practices as required by subsection (d) below; service termination procedures; change in service procedures; refund and rebate or credit policies (including requirements for requesting refunds, rebates or credits); office hours; converter/VCR hookup information and use instructions; pay-per-view information; and parental control devices.

(d) *Subscriber billing practices.*

- (1) Notification of practices. The franchisee shall notify each of its subscribers to cable service or noncommercial subscribers to other lawful service of its

billing practices through the written service information required by subsection (c) above. The service information shall describe the franchisee's billing practices regarding, but not limited to, frequency of billing, time periods upon which billing is based, advance billing practices, security deposit requirements, charges for late payments or returned checks, payments necessary to avoid account delinquency, availability of credits for service outages, procedures to be followed to request service deletions, including the required notice a subscriber or noncommercial subscriber must provide to avoid liability for such services, and procedures to be followed in the event of a billing dispute.

- (2) Notification of change of practices. The franchisee shall notify all affected subscribers to cable service or noncommercial subscribers to other lawful service not less than thirty (30) days prior to any material change in the franchisee's billing practices and such notice shall include a description of the changed practice.
- (3) Content of subscriber bill. The bill of a subscriber to cable service or of a noncommercial subscriber to other lawful service shall contain the following information presented in plain language and format: name and address of the franchisee, the period of time over which each chargeable service is billed, including prorated periods as a result of the establishment and termination of cable service or other lawful service; each rate or charge levied for programming services, equipment provided, and other services or items offered; the amount of the bill for the current billing period, separate from any balance; the franchisee's telephone number and a statement that the subscriber or noncommercial subscriber may call the number with any questions or complaints about the bill; and the date on which payment is due from the subscriber or noncommercial subscriber.
- (4) Delinquent bills. The account of a subscriber to cable service or of a noncommercial subscriber to other lawful

service shall not be considered delinquent until at least thirty (30) days have elapsed from the due date of the bill, which shall be a date certain. The franchisee shall not impose a late charge on such subscriber or noncommercial subscriber unless such subscriber or noncommercial subscriber is delinquent, the franchisee has given the subscriber or noncommercial subscriber written notice of the delinquency in a clear and conspicuous manner and the subscriber or noncommercial subscriber has been given at least eight (8) business days from the mailing of the notice to pay the balance due. A charge of not more than five dollars (\$5.00), as adjusted for increases or decreases in the consumer price index occurring after the date of the acceptance of this franchise, may be imposed monthly as a late charge. No late charge may be assessed on the amount of a bill in dispute if found in favor of the subscriber or noncommercial subscriber. Any charge for returned checks shall be reasonably related to the costs incurred by the franchisee in processing such checks.

- (5) Itemization of bills. In the event the franchisee provides bills, statements, invoices, or notices to subscribers to cable service or to noncommercial subscribers to other lawful service which separately itemize the portion or portions of the franchisee's charges which are attributed to any tax or fee, the itemization format shall first be provided to the city. In no event shall any such itemization by the franchisee be inconsistent with any applicable federal, state or local law.

(e) *System outages.*

- (1) Notification of system outages. The franchisee shall provide information including number, cause, and corrective actions taken regarding any system outage in its annual operational report required under Section 9-12(f). Annual reports on all system outages shall also be made available for public inspection, within seven (7) days upon request, for a period of not less than one (1) year.
- (2) Service outages. The account of any subscriber to cable service or

noncommercial subscriber to other lawful service shall be credited, upon request, with 1/15th of the subscriber's or noncommercial subscriber's normal monthly service charge if the subscriber or noncommercial subscriber is without cable service or other lawful service or if the signal quality or continuity of cable service or other lawful service is substantially impaired for any reason for each period exceeding 12 continuous hours during any 24 hour period, except for an outage or impairment caused by the subscriber or noncommercial subscriber or that relates to the malfunction of the subscriber's or noncommercial subscriber's television receiver or is otherwise unrelated to the operation of the system.

(f) *Continuity of service.* It shall be the right of all subscribers to continue receiving cable service and all noncommercial subscribers to continue receiving other lawful service insofar as their financial and other obligations to the franchisee are honored. In the event that the franchisee elects to overbuild, rebuild, modify, or sell the system, or the city gives notice of intent to terminate or fails to renew this franchise, the franchisee shall act so as to ensure that all such subscribers or noncommercial subscribers receive continuous, uninterrupted cable service or other lawful service regardless of the circumstances. In the event of a change of franchisee, or in the event a new operator acquires the system, the franchisee shall cooperate with the city, new franchisee or operator in maintaining continuity of service to such subscribers or noncommercial subscribers. During such period, the franchisee shall be entitled to appropriate revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system. In the event the franchisee fails to operate the system for five (5) consecutive days without prior approval of the city or without just cause, the city may, at its option and discretion, operate the system or designate an operator until such time as the franchisee restores cable service to subscribers or other lawful service to noncommercial subscribers under conditions acceptable to the city or until a permanent operator is selected. If the city is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the city for all reasonable costs or damages in excess of revenues

from the system which will be received and retained by the city that are the result of the franchisee's failure to perform.

(g) *Disconnection of cable services.* If any subscriber to cable service or any noncommercial subscriber to other lawful service fails to pay a properly due monthly subscriber fee, or any other properly due fee or charge, the franchisee may disconnect the subscriber's cable service or Noncommercial subscriber's other lawful service outlet, provided, however, that such disconnection shall not be effected until after the latter of (i) 45 days after the due date of said delinquent fee or charge or (ii) ten (10) days after written notice of the intent to disconnect. If a subscriber or noncommercial subscriber pays before expiration of the latter of (i) or (ii), the franchisee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, the franchisee shall promptly reinstate the subscriber's cable service or noncommercial subscriber's other lawful service. The franchisee may recover reasonable costs for disconnections as permitted under FCC standards, subject to any changes in the FCC standards or changes in the rate regulation capability of the city.

(h) *Refunds.*

- (1) Failure to provide cable service. If the franchisee fails to provide any available cable service carried on its system upon the request of a subscriber, the franchisee shall, after being afforded reasonable opportunity to provide the cable service, not to exceed thirty (30) days, promptly refund all deposits or advance charges paid for the cable service in question by said subscriber. This provision shall not alter the franchisee's responsibility to subscribers under any separate contractual agreements the franchisee may have with said subscribers to relieve the franchisee for liability for penalties under this franchise that may result to the city or any subscriber because of the franchisee's representation.
- (2) Termination credit. If for any reason any subscriber terminates any cable service or any noncommercial subscriber terminates any other lawful service prior to the end of a prepaid period, a prorated portion of

any prepaid subscriber or noncommercial subscriber service fee, using the number of days as a basis, shall be credited to the subscriber's or noncommercial subscriber's account by the franchisee and refunded to the subscriber or noncommercial subscriber upon settlement of all outstanding obligations.

(i) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures outlined in Section 9-18 of this franchise.

(1969 Code, Sec. 7 1/2-13; G.O. 1149, 1-31-94)

#### **Sec. 9-14. Regulation of programming.**

(a) *Future regulation rights.* The city reserves the right to regulate programming to the fullest extent permitted by law. If the city becomes qualified to exercise programming regulatory authority, then the franchisee shall provide the city with all information necessary for the city to administer such programming authority.

(b) *Programming changes.* The franchisee shall provide at least 30 days advance written notice to subscribers to cable service or noncommercial subscribers to other lawful service and the city of any change in channel assignment or in the video programming service provided over any such channel if the change is within the control of the franchisee. Such written notice shall be consistent with FCC regulations and provisions where not otherwise addressed in this franchise. The franchisee shall also inform such subscribers and noncommercial subscribers, via written notice, that written comments on programming and channel position changes will be filed by the franchisee in its office maintained in the city and shall be made available for public inspection, within seven (7) days upon request, for a period of at least one (1) year.

(c) *Programs to be carried in entirety.* Subject to applicable FCC regulations or other agreements between the franchisee and broadcast system operators, all programs of local commercial television stations (as defined in 47 U.S.C. Section 534(h)(1)(A)) carried by the franchisee pursuant to the "must carry" provisions of 47 U.S.C. Section 534 shall be carried in their entirety as received, with announcements and advertisements and without additions.

(d) *Liquidated damages.* The obligations of the franchisee under this section are subject to the

procedures outlined in Section 9-18 of the franchise.

(1969 Code, Sec. 7 1/2-14; G.O. 1149, 1-31-94)

**Sec. 9-15. Regulation of rates.**

(a) *Future regulation rights.* The city reserves the right to regulate rates for cable services for subscribers and other lawful services for noncommercial subscribers and equipment charges for such services to the fullest extent permitted by law. If the city becomes qualified to exercise rate regulatory authority, including, but not limited to, authority over equipment charges or tier change charges, then the franchisee shall provide the city with all information required by FCC regulations for the city to administer such rate authority.

(b) *Rate changes.* The franchisee shall provide at least 30 days advance written notice to subscribers to cable service or noncommercial subscribers to other lawful service and the city of any rate change. The franchisee shall also inform such subscribers and noncommercial subscribers, via written notice, that written comments on any rate change will be filed by the franchisee at its office in the city and shall be available for public inspection, within seven (7) calendar days upon request, for a period of at least one (1) year. In addition, the franchisee will inform subscribers and noncommercial subscribers via written notice, as provided in Section 9-13(c), of the availability of any FCC forms or information required by the FCC to be made available to subscribers and noncommercial subscribers from the franchisee regarding regulation of rates for cable service. The franchisee's notice of availability of such forms or information shall contain brief information concerning the purpose of such forms or information and procedures for filing any such forms including applicable deadlines. The city council may provide public hearings at which public input shall be received regarding any proposed rate change for such services as the city may regulate.

(c) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures outlined in Section 9-18 of this franchise.

(1969 Code, Sec. 7 1/2-15; G.O. 1149, 1-31-94)

**Sec. 9-16. Access channels.**

(a) *Government channel.* No later than upon completion of the system rebuild, the franchisee shall provide a government channel for noncommercial use by the city. The city may designate an agency or person to manage the programming of the government channel. Responsibility for the content of programming offered on the government channel shall be borne by the city or the city's designated agency or person. The franchisee shall ensure that the programming offered via the government channel is available on the system to all subscribers to cable service residing within the franchise territory.

(b) *Educational channel.* No later than upon completion of the system rebuild, the franchisee shall provide an educational channel for noncommercial educational use. Programming for any educational channel or channels shall be managed jointly by the St. Joseph School District and Missouri Western State College. Full responsibility for the content of programming offered on any educational channel shall be borne by the St. Joseph School District and Missouri Western State College. The franchisee shall ensure that the programming offered via any educational channel is available on the system to all subscribers to cable service residing within the franchise territory.

(c) *Additional educational channel.* At any time after the educational channel has been activated for a period of one (1) year, if for any period of three (3) consecutive months the utilization of the educational channel between the hours of 8:00 a.m. to 10:00 p.m. exceeds 75% of the time available during those hours on the channel, then the franchisee shall provide an additional channel for noncommercial educational use.

(d) *Temporary combination access channel.* Until the government and educational channels described in subsections (a) and (b) above are activated, the franchisee shall make available ten (10) hours of time per week during the hours of 6 p.m. to 10 p.m. on an existing channel for the cablecasting of noncommercial governmental or educational programming produced by the city or a designated agency or person. These temporary access arrangements shall be discontinued at such time as separate governmental and educational channels are available as specified in subsections (a) and (b) above. Responsibility for the governmental and educational programming

offered under the temporary access arrangements shall be borne respectively by the city or the city's designated agency or person. The franchisee shall ensure that the programming offered via the temporary access arrangements is available on the system to all subscribers to cable service residing within the franchise territory.

(e) *Exportation.* The Franchisee shall not be restricted from exporting, or required by the City to export from the Franchise Territory, the programming presented on the Government Channel or any Educational Channel.

(f) *Unused time.* If there is any unused time on the government channel or any educational channel and the franchisee desires to distribute any signals over said channel or channels during such unused time, then the franchisee shall so notify the city in writing thirty (30) days in advance. The franchisee may commence the distribution of signals over such channel or channels after the 30th day following receipt of notice by the city unless the city notifies the franchisee, in writing, that it does not consent to the use of such channel or channels by the franchisee. In the event the franchisee commences to distribute any signals over said channel or channels during such unused time, the franchisee shall relinquish such use within ten (10) days of receipt of a request by the city that such use be relinquished.

(g) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures outlined in Section 9-18 of this franchise.

(1969 Code, Sec. 7 1/2-16; G.O. 1149, 1-31-94)

**Sec. 9-17. Government and educational channel equipment and facilities.**

(a) *Government channel equipment.* No later than 12 months after the effective date of this franchise, the franchisee shall provide to the city \$35,000.00 to be used by the city for the purchase or lease of equipment to be used in connection with programming for the government channel. The provision of funds for the government channel equipment shall not be conditioned on the franchisee's approval or review of equipment or other items to be purchased by the city. The franchisee shall have no explicit or implicit right to determine the nature or amount of any equipment to be purchased by the city for the programming of the government channel. In

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addition, the franchisee shall provide, at its expense, all cable and equipment necessary to establish a headend transmission link to transmit the programming of the government channel to the system headend from city hall. The franchisee shall provide and install, at its expense, all cable and like equipment necessary to connect a maximum of three (3) locations within city hall to the headend transmission link as provided above. Such connections shall permit transmission of video and audio signals from designated areas inside city hall to the area where the headend transmission link is located. The franchisee shall relocate and reinstall, at its expense, such links and connections as outlined above in a new structure designated by the city, provided such structure is within the franchisee territory and within 250 feet of a trunk cable, a maximum of one (1) time during the life of the franchise.

(b) *Replacement of equipment.* The franchisee shall provide to the city the amount of \$17,500.00 for the purchase of equipment to replace the equipment described in subsection (a) above upon the eighth anniversary of the effective date of this franchise.

(c) *Technical assistance.* The franchisee shall make available to the city up to 40 hours annually of technical and engineering consulting services from the franchisee's staff for the purpose of advising and assisting the city in operation of the government channel and on cable television technical and engineering matters.

(d) *Cost of equipment.* Pursuant to 47 U.S.C., Section 542 (g)(2), the capital costs incurred by the franchisee for government channel and any educational channel facilities shall not be included by the franchisee in its calculations of franchise fees (See Sections 9-7 and 9-8 herein).

(e) *Liquidated damages.* Failure of the franchisee to meet the obligations under this section shall make it subject to the procedures outlined in Section 9-18 of this franchise and may be considered a substantial breach of the franchise for purposes of Section 9-23.

(1969 Code, Sec. 7 1/2-17; G.O. 1149, 1-31-94)

**Sec. 9-18. Letter of credit.**

(a) *Nature of the letter.* At the time this franchise is accepted, the franchisee shall deliver to the city an irrevocable and unconditional letter



of credit, in form and substance acceptable to city, from a national or state bank approved by the city in the sum of \$10,000.00 as security for the faithful performance by it of all the provisions of the franchise and compliance with all applicable orders, permits and directions of the city and the payment of the franchisee of any claim, liens and taxes due to the city which arise by reason of the construction, operation or maintenance of the system.

(b) *Drawing against the letter.* The letter of credit shall provide that funds will be paid to the city, upon written demand of the city, in the following amounts: 1) liquidated damages as set forth below in subsection (g) and 2) reimbursement for any damages, losses, costs and expenses incurred by the city in connection with performing or securing performance of the franchise provisions by the franchisee. The drawing of amounts from the letter of credit shall constitute a credit against the amount of the applicable liability of the franchisee to the city, but only to the extent of said draw.

(c) *Renewal of the letter.* If said letter of credit or any subsequent letter of credit delivered pursuant hereto expires prior to 15 months after the expiration of the term of the franchise, it shall be renewed or replaced during the term of the franchise to provide that it will not expire earlier than 15 months after the expiration of the franchise. The renewed or replaced letter of credit shall be on the same form and with a bank authorized herein and for the full amount stated in paragraph (a) of this section. If the franchisee cannot obtain a letter of credit extending past the expiration of the franchise, the franchisee shall post a cash bond or cash security fund, or other financial instrument acceptable to the city and the franchisee, to expire no later than 15 months after the expiration of the franchise.

(d) *Replenishment of the letter.* Throughout the term of this franchise, the franchisee shall maintain the letter of credit in the amount specified in subsection (a) hereof. Within 30 days after receipt of notice from the city that any amount has been drawn from the letter of credit, the franchisee shall restore the letter of credit to the amount specified in subsection (a) hereof, provided that such restoration obligation shall be suspended during the period of any arbitration proceedings brought by the franchisee, pursuant to Section 9-39 of this franchise, to determine the propriety of such withdrawal from the letter of

credit. If the arbitrators determine that such withdrawal by the city was improper, the city shall restore the improperly withdrawn amount of the letter of credit, together with interest that would have accrued thereon, but for the withdrawal.

(e) *Failure to replenish.* If any letter of credit is not replenished, and the franchisee has not challenged the propriety of withdrawal as provided in Subsection (d) hereof, the city may draw on said letter of credit for the whole amount thereof and hold the proceeds, without interest to franchisee, and use the proceeds to pay costs incurred by the city in performing and paying 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 pursuant hereto, including attorneys' fees incurred by the city in so performing and paying. The failure to so replenish any letter of credit may also, at the option of the city, be deemed a default by the franchisee under this franchise. The drawing on the letter of credit by the city, and use of the money so obtained for payment of liquidated damages or of expenses incurred by the city in connection with performing or securing performance of the franchise provisions by the franchisee, shall not be a waiver or release of any default by the franchisee.

(f) *Withdrawals.* If the franchisee fails, after 30 days' notice and right to cure, to reimburse or pay the city for any damages, losses, costs and expenses incurred by the city in connection with performing or securing performance of the franchise provisions by the franchisee or fails to make any payment to the city required by this franchise within the time fixed herein, the city may immediately withdraw the amount thereof, with interest and any liquidated damages, from the letter of credit. Within ten (10) days after any such withdrawal, the city shall notify the franchisee in writing of the amount and date thereof.

(g) *Liquidated damages from the letter.* In addition to recovery of any monies owed by the franchisee to the city for damages, or any other remedies resulting from any act or omission by the franchisee pursuant to the franchise, the city may charge to and collect from the letter of credit the following liquidated damages after giving franchisee notice and right to cure for the violations as specified below:

- (1) for failure to meet conditions of city permits to disturb the streets and public property and failure to correct such violation within 15 days of the receipt of written notice of such failure from the city, the amount shall be \$50.00 per day;
- (2) for failure to comply with construction, operation or maintenance standards and failure to correct such violation within 30 days of the receipt of written notice of such failure from the city, the amount shall be \$100.00 per day;
- (3) for failure to provide the service the franchisee has proposed and failure to correct such condition within 30 days of the receipt of written notice of such failure from the city, the amount shall be \$100.00 per day;
- (4) for failure to test, analyze and report on the performance of the system as required by this franchise, or applicable federal, state or local laws, within 15 days of the receipt of a written request from the city, the amount shall be \$100.00 per day;
- (5) for failure to provide or complete mutually agreed upon additional services or system modifications within 90 days after request by the city following a periodic review or renegotiation session, the amount shall be \$200.00 per day;
- (6) for failure to provide the city with any books, records, data, documents, or other information or for failure to cooperate with the city during an application process, audit, or system performance review within 60 days of the receipt of a written request from the city, the amount shall be \$100.00 per day; and
- (7) for failure to comply with any of the provisions of any section of the franchise for which an amount is not otherwise specifically provided pursuant to this section and failure to correct such condition within 30 days of the receipt of written notice from the city, the amount shall be \$100.00 per day.

Each violation of any provision of the franchise shall be considered a separate violation for which a separate remedy can be imposed.

Within ten (10) days after each of the foregoing withdrawals, the city shall notify the franchisee in writing of the amount and date thereof.

(h) *City may recover only actual damages.* Nothing contained herein authorizing the city to exercise one or more of its rights or remedies shall be construed to permit the city to recover more than the amount of its actual damages resulting from any act or omission of the franchisee.

(i) *Arbitration of imposed liquidated damages.* In the event the franchisee disagrees with or wishes to contest the city's decision to liquidate damages according to the provisions and procedures of this franchise, the franchisee or the city may request arbitration of such disagreement according to the provisions of Section 9-39. Multiple requests for arbitration of multiple impositions of liquidated damages stemming from a single incident, situation, or set of circumstances, or from closely related incidents, situations, or sets of circumstances, shall be handled as one case for purposes of arbitration. (1969 Code, Sec. 7 1/2-18; G.O. 1149, 1-31-94)

#### **Sec. 9-19. Indemnification.**

(a) *Franchisee's obligations.* The franchisee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the city and its officers, boards, commissions and employees against any and all claims, suits, actions, liability, and judgments for damages (including, but not limited to, expenses for reasonable legal fees and disbursements):

- (1) For injury to persons or damage to property, in any way arising out of or through the acts or omissions of the franchisee, its servants, agents or employees, whether or not any act or omission complained of is authorized, allowed or prohibited by this franchise or to which the franchisee's negligence shall in any way contribute, to the extent such acts, omissions or negligence are in any way connected with the operation of the system;
- (2) For invasion of the right of privacy, for defamation of any person, for violation or infringement of any copyright, trademark,

trade name, service mark, or patent or of any other right of any person in any way connected with the operation of the system;

- (3) For the franchisee's failure to comply with the provisions of any applicable federal, state or local statute, regulation or ordinance, including, but not limited to, those dealing with civil rights or antitrust applicable to the franchisee in any way connected with the operation of the system; and
- (4) The foregoing indemnification obligations of the franchisee shall not apply to any claims, suits, actions, liability or judgments for damages arising out of the use or distribution of programming or services over the government channel or any educational channel.

(b) *City's obligations.* In order for the city to assert its rights to be indemnified, defended, or held harmless, the city must:

- (1) Promptly notify the franchisee of any claim or legal proceeding which gives rise to such right;
- (2) Afford the franchisee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding; provided, however, that
  - a. the city shall be entitled to participate in the defense of such claim or proceeding, and in connection therewith to employ counsel at its own expense, and
  - b. without the prior written consent of the city, which shall not be unreasonably withheld or delayed, the franchisee shall not consent to the entry of any judgment or enter into any settlement that, pursuant to or as a result of such judgment or settlement, would impose injunctive or other equitable relief against the city;
- (3) Fully cooperate with the reasonable requests of the franchisee, at the franchisee's expense, in its participation

in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph (2) above.

(c) *Recovery by city under letter of credit.* No recovery by the city of any sum by reason of the letter of credit required in Section 9-18 hereof shall be any limitation upon the liability of the franchisee to the city or shall be deducted from any recovery which the city might have against the franchisee under the terms of this section. (1969 Code, Sec. 7 1/2-19; G.O. 1149, 1-31-94)

#### **Sec. 9-20. Liability and insurance.**

(a) *Insurance levels.* The franchisee shall maintain and by its acceptance specifically agrees that it will maintain throughout the term of the franchise liability insurance insuring the city and members of the city council and all city employees and commissions and the franchisee with regard to all damages incurred in connection with the construction, operation or repair of the system, including, but not limited to, those referred to in Section 9-19 herein in the minimum amount of:

- (1) One million dollars (\$1,000,000.00) for bodily injury or death to any one person, and one million dollars (\$1,000,000.00) for bodily injury or death resulting from any one accident;
- (2) One million dollars (\$1,000,000.00) for property damage resulting from any one accident; and
- (3) Worker's compensation coverage covering all of the franchisee's employees.

(b) *Policy standards.* The insurance policy obtained by the franchisee in compliance with this section must be obtained from an insurance company licensed to do business in the State of Missouri with a rating of not less than "A" by Best. The franchisee shall submit a certificate or certificates of insurance confirming that a satisfactory policy or policies of insurance are in effect, along with written evidence of payment of required premiums. Such documents shall be filed and maintained with the city throughout the term of this franchise.

(c) *Subcontractor insurance or bonding.* The franchisee shall require that any and all subcontractors utilized by the franchisee to carry out construction in connection with the system upgrade specified in Section 9-10 maintain usual and customary insurance or bonding.

(d) *Faithful performance.* Neither the provisions of this section, nor any damages recovered by the city under such policies of insurance, shall be construed to excuse faithful performance by the franchisee or limit the liability of the franchisee under this franchise. (1969 Code, Sec. 7 1/2-20; G.O. 1149, 1-31-94)

**Sec. 9-21. Sale or transfer of franchise.**

(a) *Prohibition of sale or transfer.* This franchise shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without full compliance with the procedures set forth in this section.

(b) *Definition of sale or transfer.* The provisions of this section shall apply to the sale or transfer of the assets of the franchisee, merger, consolidation, or sale or transfer of stock in the franchisee so as to create a new controlling interest. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. The provisions of this section shall not apply to (1) the sale or transfer of assets to, merger or consolidation with or sale or transfer of voting stock to any person that is a direct or indirect subsidiary of the franchisee and in which the franchisee has a controlling interest or (2) any assignment, pledge, or mortgage of all or any part of the system, or any right or interest therein, to a recognized banking or lending institution, for financing purposes or any transfer to, or taking possession by, any banking or lending institution of all or any part of the system pursuant to its rights as a secured creditor, subject to the rights of the city pursuant to this franchise and applicable law.

(c) *Transfer procedure.*

- (1) The parties to the sale or transfer shall make a written request to the city for its approval of a sale or transfer. The written request shall not be deemed complete

until all information under applicable FCC regulations and reasonable requests of the city is provided to the city. Upon receipt of a complete written request with all application information, the city shall have 120 days to grant or deny such approval. Within 30 days of the request, the city shall make a determination pursuant to this franchise as to the exercise of its first right of refusal to purchase the system.

- (2) The city shall reply in writing within 30 days of the request and shall exercise its first right of refusal or indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on the franchisee's subscribers.
- (3) If a public hearing is deemed necessary pursuant to Subsection (c) (2) hereof, such hearing shall be commenced within 30 days of such determination and notice of any such hearing shall be given at least 14 days prior to the hearing by publishing notice thereof. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the city.
- (4) Within 30 days after the completion of the public hearing, the city shall approve or deny in writing the sale or transfer request.
- (5) Within thirty (30) days of any sale or transfer, the franchisee shall file with the city a copy of the deed, instrument of conveyance, agreement, mortgage, lease or other written instrument evidencing such sale, transfer of ownership or control of lease, certified and sworn to as correct by the franchisee.

(d) *Transfer conditions and requirements.* In reviewing a request for sale or transfer pursuant to Subsection (a) above, the city may inquire into the legal, technical and financial qualifications of the prospective transferee, and the franchisee shall assist the city in that inquiry. The city may condition its approval of the sale or transfer upon such reasonable terms and conditions as it deems appropriate. In no event shall a sale or transfer or assignment of ownership or control be

approved without the transferee becoming a signator to this franchise.

(e) *Rights not waived.* The consent or approval of the city to any sale, assignment, lease, transfer, sublease or mortgage of the franchise shall not constitute a waiver or release of the rights of the city in and to the streets and public property.

(f) *City's right to purchase system.* The city shall be entitled to a right of first refusal of any bona fide offer to purchase the system made to the franchisee. Bona fide offer as used in this section shall mean a written offer made in good faith which has been accepted by the franchisee honestly, openly and without deceit or fraud, subject to the city's rights under this franchise. The price to be paid by the city shall be the bona fide offer including the same terms and conditions as the bona fide offer. The city shall notify the franchisee of its decision to purchase within thirty (30) days of the city's receipt from the franchisee of a copy of the written bona fide offer. (1969 Code, Sec. 7 1/2-21; G.O. 1149, 1-31-94)

#### **Sec. 9-22. Foreclosure and receivership.**

(a) *Foreclosure.* Upon the foreclosure or other judicial sale of all or a substantial part of the system, the franchisee shall notify the city of such fact and such notification shall be treated as the notification that a change in control of the franchise has taken place and provisions of this chapter governing consent of the city to such sale or transfer of control of the franchise shall apply without regard to how such sale or transfer or change in ownership occurred.

(b) *Receivership.* The city shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the franchisee, whether in receivership, reorganization, bankruptcy or other action of proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

- (1) Within one hundred twenty (120) days after his or her election or appointment such receiver or trustee shall have fully complied with all of the provisions of this chapter and remedied all defaults thereunder; and

- (2) Such receiver or trustee, within said 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 section and the franchise.

(1969 Code, Sec. 7 1/2-22; G.O. 1149, 1-31-94)

#### **Sec. 9-23. Forfeiture of franchise.**

(a) *Forfeiture conditions.* In addition to all other rights and powers retained by the city by virtue of this franchise or otherwise, the city also reserves the right to terminate and cancel this franchise and all rights and privileges of the franchisee hereunder in the event of a substantial breach of its terms and conditions. A substantial breach of the terms or conditions of this franchise shall mean the following:

- (1) Violation of material provision of this franchise or any applicable material rule, order of determination of the city or city council made pursuant to this franchise, and failure to correct such violation within 30 days of the receipt of written notice of violation from the city;
- (2) An attempt to dispose of any of the facilities or property of its system to prevent the city from purchasing the same, as provided for herein;
- (3) The practice of any fraud or deceit upon the city or its subscribers;
- (4) Insolvency, inability or unwillingness to pay debts or a judgment of bankruptcy;
- (5) Failure to restore cable service following 120 consecutive hours of interrupted cable service, except when approval of such interruption is obtained from the city;
- (6) Failure to commence system construction or rebuild in a timely manner following a thirty (30) day notice and right to cure period;
- (7) Failure to complete system construction or reconstruction as specified in Section 9-10 herein following a 30 day notice and right to cure period; and

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- (8) Material misrepresentation of fact in the application for or negotiation of this franchise.

(b) *Forfeiture procedures.* The city shall exercise the rights provided in this section in accordance with the procedures set forth below:

- (1) The city shall notify the franchisee of an alleged substantial breach of the terms or conditions of this franchise, which notice shall specify the alleged substantial breach with reasonable particularity. The franchisee shall, within 30 days after receipt of such notice, either cure such alleged substantial breach or, in a written response to the city, present facts and arguments in refutation or excuse of such alleged substantial breach.
- (2) The city shall, thereafter, have 30 days to determine
  - a. whether a substantial breach has occurred,
  - b. whether such substantial breach is excusable, and
  - c. whether such substantial breach has been cured by the franchisee.
- (3) If the city determines that such substantial breach has not occurred, or that such substantial breach is excusable, or that such substantial breach has been cured in a manner satisfactory to the city, such determination shall conclude the investigation. If the city determines that a substantial breach has occurred and that such substantial breach is not excusable and has not been cured by the franchisee in a manner satisfactory to the city, the city shall so notify the franchisee and shall have the right to terminate and cancel this franchise and all rights and privileges of the franchisee hereunder.
- (4) Notwithstanding the foregoing, the city may terminate and cancel this franchise immediately by providing written notice to the franchisee of such termination and cancellation in the event any of the actions described in subsections (a) (2), (3), (4), (5) or (8) of this section shall occur.

(c) *Purchase by city upon forfeiture, termination or denial of renewal.* Upon the forfeiture or termination of this franchise under this section, the city may in lawful manner and upon the payment of an equitable price lawfully obtain, purchase, condemn, acquire, take over and hold the system. If renewal is denied, the city may, in lawful manner and upon the payment of fair market value, determined on the basis of the system as valued as a going concern exclusive of any value attributable to the franchise itself, lawfully obtain, purchase, condemn, acquire, take over and hold the System.

(d) *Removal of facilities.* In the event of forfeiture or termination, subject, however, to the requirements herein for mandatory cable service continuity, the franchisee shall have one year from the date on which it ceases operations to remove, at its own expense, all above-ground portions of its system from all streets and public property within the city and shall restore said streets and public property to a condition satisfactory to the city within such period of time. (1969 Code, Sec. 7 1/2-23; G.O. 1149, 1-31-94)

#### **Sec. 9-24. Franchise renewal.**

(a) *Renewal.* This franchise may be renewed in accordance with applicable federal, state and local law.

(b) *Renewal costs.* All reasonable costs and expenses, not to exceed the sum of \$75,000.00, which the city incurs for the services of third parties, namely attorneys and consultants, in connection with any renewal of this franchise shall not be deemed to be "franchise fees" as defined in Section 9-7 herein. In no event shall any such renewal costs be inconsistent with any federal, state or local law. (1969 Code, Sec. 7 1/2-24; G.O. 1149, 1-31-94)

#### **Sec. 9-25. Periodic franchise renegotiation and review.**

(a) *Policy of review.* Recognizing the fluid and expanding state of the development of cable communications technology and uses, it is the policy of the city to strongly encourage experimentation and innovation in the development of cable service, uses, programming

and techniques that will be of general benefit to the community; provided that all such experiments and innovations shall be subject to the rules of the FCC and any other federal, state and local laws. It is also the policy of the city to periodically review and evaluate the fitness and acceptability of the franchisee and of the franchisee's performance. The city shall make a written request for such review of the fitness, acceptability, and performance of the franchisee in the third (3rd), sixth (6th), ninth (9th) and twelfth (12th) year of this franchise.

(b) *Review procedure.* To provide for technological changes in the state of the art of cable communications, to promote the maximum degree of flexibility in the system, and to respond effectively to the expressed desires of subscribers to achieve a continuing, advanced modern system for the city, the following guidelines are established for the review and renegotiation of the provisions of this franchise:

- (1) Special review and renegotiation sessions may be held at any time during the term of the franchise at the request of either the City or the franchisee, with such request to specify the topics to be reviewed or discussed, including any proposals therefor.
- (2) Topics for discussion at the special review and renegotiation sessions may include, but shall not be limited to, the following: Cable services, rate structure, application of new technologies, system performance, cable services provided, programming, subscriber complaints, user complaints, rights of privacy, amendments to this franchise and developments in the law.
- (3) Nothing contained in this section shall be construed to limit any rights of renegotiation possessed by the city pursuant to any other section of this franchise nor shall it be construed to grant either the city or the franchisee the right to amend or modify this franchise without the agreement of the other.

(1969 Code, Sec. 7 1/2-25; G.O. 1149, 1-31-94)

#### **Sec. 9-26. Rights of individuals.**

(a) *Protection of subscriber privacy.* The franchisee shall comply with all applicable

federal, state, and local laws and regulations regarding protection of subscriber privacy, including, without limitation, the provisions of the cable act and FCC regulations regarding collection, use and disclosure of personally identifiable information of subscribers.

(b) *Prohibition or limit of disclosure of information.* The franchisee shall inform subscribers, via written notice, of subscriber opportunities to prohibit or limit disclosure of personally identifiable information. Each subscriber shall also be informed, via written notice, of the availability of access to all personally identifiable information regarding that subscriber, which is collected and maintained by the franchisee.

(c) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures outlined in Section 9-18 of this franchise.

(1969 Code, Sec. 7 1/2-26; G.O. 1149, 1-31-94)

#### **Sec. 9-27. Censorship prohibited.**

(a) *Right of free speech.* The city reserves the right to promulgate any rules or regulations or conditions designed to ensure the right of free speech by means of cable service.

(b) *Prohibition of programming.* The franchisee shall not prohibit or limit any program or class or type of program presented over any educational channel, government channel or leased channel. Notwithstanding the foregoing, the franchisee may prohibit indecent programming (as those terms are defined by the FCC) on any leased channel and may prohibit any programming on the educational channels or government channel that contains obscene material, indecent material, or material soliciting or promoting unlawful conduct (as those terms are defined by the FCC). In addition, the franchisee may require any user or educational channel or government channel manager or administrator to certify that the programming on any educational channel or government channel does not contain any obscene, indecent material or material soliciting or promoting unlawful conduct, and that reasonable efforts will be undertaken to ensure that any live programming does not contain any such material.

(c) *Parental lock out.* The franchisee shall provide parental control devices to subscribers

with the capability to disable or lock out reception of specified channels of cable service at subscriber's discretion in accordance with the applicable provisions of the cable act. Subscribers who request such devices will be charged for the cost of materials only.

(d) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures outlined in Section 9-18 of this franchise.

(1969 Code, Sec. 7 1/2-27; G.O. 1149, 1-31-94)

**Sec. 9-28. Discriminatory practices prohibited.**

(a) *Differential rates.* With respect to cable service to subscribers or other lawful service to noncommercial subscribers, the franchisee shall not, as to rates, charges, services, service facilities, rules, regulations, use of facilities or any other respect, make or grant any undue preference or advantage to any party, or subject any party to prejudice or disadvantage; provided however, that this section shall not be deemed to prohibit bona fide promotional activities of the franchisee, the supplying of free service to the employees of the franchisee, discounts for the elderly or disabled that are applied in a uniform and consistent manner, or negotiation of bulk rates and charges and associated terms and conditions for the provision of cable service to multiple unit residential buildings, or complexes of such buildings, motels, hotels, hospitals, nursing homes, or commercial buildings to the extent permitted in 47 USC Sec. 543(d).

(b) *Non-discrimination.* The franchisee agrees in the performance of its rights and duties under this franchise not to discriminate on the grounds of race, creed, color, national origin or ancestry, sex, sexual orientation, religion, physical or mental disability, income of individuals or income of residents of particular areas, or political opinion or affiliation, against any subscriber, potential subscriber, or user or against any employee of the franchisee or applicant for employment with the franchisee, and shall include a similar provision in all subcontracts let or awarded under this franchise. All anti-discriminatory practices shall be consistent with the specifications of 47 U.S.C. Section 554. A copy of any reports, required by 47 U.S.C. Section 554 (d)(3)(a), or any similar report, shall be filed with the city clerk.

(c) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures outlined in Section 9-18 of this franchise.

(1969 Code, Sec. 7 1/2-28; G.O. 1149, 1-31-94)

**Sec. 9-29. Landlord-tenant relationship.**

(a) *Interference with installation.* No landlord shall interfere with the installation of facilities of the system upon his or her or its property or premises, except that a landlord may require:

- (1) that the installation of system facilities conform to such reasonable conditions as are necessary to protect the safety, functioning and appearance of the premises and the convenience and well-being of other tenants;
- (2) that the franchisee or the tenant or a combination thereof bear the entire cost of the installation, operation or removal of such facilities; and
- (3) that the franchisee and the tenant agree to indemnify the landlord for any damage caused by the installation, operation or removal of such facilities.

(b) *Payment not permitted.* No landlord shall demand or accept payment from any tenant, in any form, in exchange for permitting cable service or other lawful services on or within his or her or its property or premises, or from the franchisee in exchange therefor in excess of one dollar (\$1.00).

(1969 Code, Sec. 7 1/2-29; G.O. 1149, 1-31-94)

**Sec. 9-30. General conditions.**

(a) *Filing of reports.* When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the city clerk.

(b) *Cost of granting franchise.* The franchisee shall pay to the city a sum of money sufficient to reimburse it for all expenses incurred by it in connection with publication or filing costs related to this franchise. Such payment shall be made within 30 days after the city furnishes the franchisee with a written statement of such expenses.

(c) *Reserved rights.* The city reserves the right to adopt, in addition to the provisions contained



herein and in existing applicable ordinances, such additional regulations of general applicability, provided that such regulations, by ordinance or otherwise, shall be reasonable and consistent with the provisions of the cable act.

(d) *Intervention.* The franchisee agrees not to oppose intervention by the city in any suit or proceeding to which the franchisee is a party with respect to the operation of the cable system.

(e) *Filing communications with regulatory agencies.* Copies of all petitions, applications and communications submitted by the franchisee to the FCC, or any other federal or state regulatory commissions or agencies having jurisdiction with respect to any matter affecting system operations, insofar as the same might affect the cable service or operations of the franchisee's system in the franchise territory, shall be submitted simultaneously to the city for one (1) year following the effective date of this franchise. Following one (1) year from the effective date of the franchise, the franchisee shall submit copies of the above-described documents to the city upon written request of the city. Such written request may be a standing request for certain types of documents or for documentation filed on a periodic basis.

(f) *Franchisee will not contest validity of franchise.* The franchisee agrees by the acceptance of this franchise that it will not at any time in any claim or in any proceeding against the city, challenge any condition or term of this franchise as being unreasonable, arbitrary or void or assert that the city had no 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 in their entirety.

(g) *Nonenforcement by city.* The franchisee shall not be relieved of its obligation to comply with any of the provisions of the Franchise by reason of any failure of the city to enforce prompt compliance.

(h) *Notice of provision of other lawful service.* The franchisee shall provide written notice to the city prior to offering any other lawful service over the system in the franchise territory and shall file with the city a copy of its authorization from other governmental authorities to provide such other lawful service if any such authorization is necessary or has been obtained.

(i) *Common carrier regulation.* The city reserves the right as permitted by federal or state law to regulate other lawful service provided by the franchisee.

(j) *Leasing of network.* In the event the franchisee leases all or part of the fiber optic network or contracts for management operation of its system or fiber optic network, the franchisee shall still be required to meet the obligations and requirements of this franchise. Penalties or damages for failure to perform or meet conditions of the franchise shall be assessed against the franchisee and are acknowledged by the franchisee to be the franchisee's express responsibility.

(k) *Liquidated damages.* The obligations of the franchisee under this section are subject to the procedures outlined in Section 9-18 of this franchise. (1969 Code, Sec. 7 1/2-30; G.O. 1149, 1-31-94)

### **Sec. 9-31. General provisions on rights and remedies.**

(a) *City's rights cumulative.* All rights and remedies given to the city by the franchise shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the city, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by the 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 the city 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 or thereafter any of the rights or remedies. No delay or omission of the city to exercise any rights or remedy shall excuse any default by the franchisee. The exercise of any such right or remedy by the city shall not release the franchisee from its obligations or any liability under the franchise. Nothing contained herein authorizing the city to exercise one or more of its rights or remedies shall be construed to permit the city to recover more than the amount of its actual damages resulting from any act or omission of the franchisee.

(b) *Additional remedies.* In addition to all other remedies granted or available to the city, it shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation,

by the franchisee of any terms or provisions of the franchise, or to a decree compelling performance by the franchisee of any term or provision of the franchise.

(c) *Good faith.* This agreement is entered into in good faith and the parties hereto have read, understood and agreed to all the terms and conditions herein. Both parties believe that the terms and conditions herein are not unreasonable or arbitrary and that each party has the power to agree to the terms and conditions herein.

(d) *City administration of franchise.* The city reserves the right to delegate and re-delegate from time to time any of its rights or obligations under the franchise to any body or organization. (1969 Code, Sec. 7 1/2-31; G.O. 1149, 1-31-94)

### **Sec. 9-32. Limitations of rights.**

(a) *Explicit rights only.* No privilege or exemption is hereby granted or conferred to the franchisee by this franchise except those specifically prescribed herein.

(b) *Subordination of rights.* Any privilege claimed under this franchise by the franchisee in any street or public property shall be subordinate to any prior lawful occupancy of the streets or public property.

(c) *No recourse against the city.* The franchisee shall have no recourse whatsoever against the city or its officials, agents or employees for any losses, costs, expenses or damages arising out of any provision or requirement of the franchise or because of the enforcement of the franchise except as specified in the cable act.

(1969 Code, Sec. 7 1/2-32; G.O. 1149, 1-31-94)

### **Sec. 9-33. Amendments.**

At the mutual agreement of the city and the franchisee, this franchise may be amended to include any additional terms or conditions which are included in any other communication, franchise agreement or contract to which the franchisee and another franchising authority are parties and which, in the city's determination, are more favorable or less burdensome to the city than conditions or terms presently included or absent from this franchise. Such additional terms or conditions shall be deemed acceptable and fair conditions of this franchise by the

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franchisee and shall not be adopted retroactively by the city.

(1969 Code, Sec. 7 1/2-33; G.O. 1149, 1-31-94)

### **Sec. 9-34. Emergency use of facilities.**

In the case of an emergency or disaster declared by either the mayor of the city, governor of Missouri or president of the United States of America, the franchisee shall, upon request of the mayor or mayoral designee, make the system available to the city, the county, state, or federal governments at no cost for use during the emergency or disaster period and shall provide such personnel as necessary to properly operate the system under said circumstances. The franchisee shall provide, in addition, an emergency warning system whereby the city's emergency communications unit can be used to make voice announcements simultaneously over all cable service channels on the system. Such emergency warning system shall be a twenty-four-hour "hot standby" system which will preempt the sound on all cable service channels. If at any time, in the case of fire or disaster in the city, it shall become necessary in the reasonable determination of the city to cut or remove any wires, cables, amplifiers, or other appurtenances to the system, such cutting or removing may be done and any repairs rendered necessary thereby shall be made by the franchisee at its sole expense, provided that such repairs are not necessitated by willful misconduct of the City.

(1969 Code, Sec. 7 1/2-34; G.O. 1149, 1-31-94)

### **Sec. 9-35. Severability.**

(a) *Severable conditions.* In the event that any court, agency, commission, legislative body, or other authority of competent jurisdiction:

- (1) declares this franchise invalid, in whole or in part, or
- (2) requires the franchisee either to
  - a. perform any act which is inconsistent with any provision of this franchise, or
  - b. cease performing any act required by any provision of this franchise.

Then the franchisee or the city shall notify the other of such fact promptly upon becoming aware of such fact. If the city determines that such

declaration or requirement does not have a material and adverse effect upon it, then the franchisee shall comply with such declaration or requirement within no later than 60 days and this franchise shall be deemed to be modified in order to conform to such declaration or requirement and such modification shall not affect the validity and enforceability of any other provision hereof. In the event that such declaration or requirement is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with the declaration or requirement, then such provision thereupon shall return to full force and effect and shall thereafter be binding on the city and the franchisee, provided that the city shall give the franchisee thirty (30) days' written notice of such change before requiring compliance with such provisions. In the event that such declaration or requirement has a material and adverse effect on the city under this franchise, then the city and the franchisee shall enter into good faith negotiations to amend this agreement so as to enable the franchisee to perform obligations for the benefit of the city as substantially equivalent to those obligations imposed by this franchise immediately prior to such declaration or requirement, to the maximum extent consistent with such declaration or requirement. In connection with such negotiations, the city and the franchisee shall consider whether the circumstances existing at that time are such that the franchisee should continue to perform such obligations or their substantial equivalent. Nothing herein shall be construed to grant either the city or the franchisee the right to amend or modify this franchise without the agreement of the other.

(b) *Rulings.* In addition to complying with subsection (a) of this section, in the event that any court, agency, commission, legislative body, or other authority of competent jurisdiction (1) declares this franchise invalid, in whole or in part, or (2) requires the franchisee either to (i) perform any act which is inconsistent with any provision of this franchise, or (ii) cease performing any act required by any provisions of this franchise, then the franchisee expressly agrees nevertheless to comply with the terms of this agreement to the maximum extent permitted by law and expressly waives, to the maximum extent permitted by law, any claim it may then have as to the validity or enforceability of the terms of this franchise. (1969 Code, Sec. 7 1/2-35; G.O. 1149, 1-31-94)

**Sec. 9-36. Effective date and acceptance of franchise.**

(a) *Effective date.* This franchise shall take effect in accordance with the requirements of federal, state and local law and upon acceptance by the franchisee.

(b) *Acceptance of franchise.* The franchisee shall have 180 days from the date of adoption of this franchise by the city council to accept this franchise in a form acceptable to the city. Such acceptance by the franchisee shall be deemed the grant of this franchise for all purposes. In the event acceptance does not take place within 180 days or such other time as the city might allow, this franchise shall be null and void. Upon acceptance of this franchise, the franchisee shall be bound by all the terms and conditions contained herein. The franchisee shall provide all services and offerings specifically set forth herein and shall provide cable services within the city.

(c) *Additional requirements.* With its acceptance of the franchise, the franchisee shall also deliver to the city a certified resolution of the franchisee evidencing its power and authority to accept the franchise. Such document(s) shall also describe the officers authorized to accept on behalf of the franchisee. With its acceptance, the franchisee shall also deliver any letters of credit, insurance certificates, performance bonds, construction bonds or construction schedules and agreements as required by this franchise. (1969 Code, Sec. 7 1/2-36; G.O. 1149, 1-31-94)

**Sec. 9-37. 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 the franchisee or to the mayor and city clerk of the city, whichever is appropriate, or when 48 hours have elapsed after it is mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the party to which notice is being given. Such addresses may be changed by either party upon notice to the other party given as provided in this section. At the date of execution herein the addresses of the parties are as follows:

Franchisee:  
News-Press & Gazette Company  
DBA St. Joseph Cablevision  
102 North Woodbine

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St. Joseph, Missouri 64506  
Attention: General Manager

City:  
City of St. Joseph, Missouri  
Room 303, City Hall  
11th & Frederick Avenue  
St. Joseph, Missouri 64501  
Attention: City Clerk

and

City of St. Joseph, Missouri  
Room 309, City Hall  
11th & Frederick Avenue  
St. Joseph, Missouri 64501  
Attention: Mayor  
(1969 Code, Sec. 7 1/2-37; G.O. 1149, 1-31-94)

**Sec. 9-38. Delays and failures beyond control of the franchisee.**

The franchisee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this franchise due to strike, war or act of war, (whether a declaration of war is made or not), insurrection, riot, act of public enemy, accidents, fire, flood, storm, earthquake, lightning, or other act of God, technical failure, or sabotage. In the event that any such delay in performance or failure to perform affects only part of the franchisee's capacity to perform, the franchisee shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause or causes. (1969 Code, Sec. 7 1/2-38; G.O. 1149, 1-31-94)

**Sec. 9-39. Arbitration.**

(a) *Provisions subject to arbitration.* In the event the city and the franchisee cannot agree on the applicability or amount of liquidated damages imposed on the franchisee as provided in Section 9-18, subject to the conditions of Subsection (h), or on the applicability or amount of damages imposed on the franchisee for abandonment as provided in Section 9-9(k), or on the application, interpretation, or administration of any section of this franchise, except for disputes related to forfeiture, termination or denial of renewal of this franchise, which may be submitted directly to a court of law, either may give notice to the other of a demand for arbitration.

(b) *Arbitration procedure.*

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- (1) The city and the franchisee shall, within 15 days of either's decision to proceed to arbitration, appoint one arbitrator each who is experienced and knowledgeable. These two arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within 15 days after appointment of the second arbitrator.
- (2) Within 30 days after appointment of all arbitrators and upon ten (10) days written notice to both the city and the franchisee by the arbitrators, the arbitrators shall commence a hearing on the matter in dispute.
- (3) The hearing shall be recorded and may be transcribed at the request of either the city or the franchisee. All hearing proceedings, debates and deliberations shall be open to the public and at such times and places as contained in the notice of the arbitration or as thereafter publicly stated in the order to adjourn.
- (4) The arbitration panel shall be required to abide by the standards and procedures applicable to commercial arbitration adopted by the American Arbitration Association.
- (5) At the close of the hearings and within 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 the city and the franchisee.
- (6) The decision of a majority of the arbitrators shall be binding upon both the city and the franchisee.
- (7) Either party may seek judicial relief to the extent authorized under Missouri law and, in addition, under the following circumstances:
  - a. A party fails to select an arbitrator;
  - b. The arbitrators fail to select a third arbitrator;
  - c. One or more arbitrator is unqualified;
  - d. Designated time limits have been exceeded;
  - e. The arbitrators have not proceeded expeditiously; or

- f. Based upon the record the arbitrators abused their discretion.
- (8) 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 suit to be awarded to the prevailing party.
- (9) The cost of arbitration shall be borne by the party requesting the same.  
(1969 Code, Sec. 7 1/2-39; G.O. 1149, 1-31-94)

**Sec. 9-40. Entire agreement.**

This chapter embodies the entire understanding and agreement of the city and the franchisee with respect to the subject matter hereof and merges and supersedes all prior drafts of this chapter.  
(1969 Code, Sec. 7 1/2-40; G.O. 1149, 1-31-94)

**ARTICLE II. VIDEO SERVICES PROVIDERS**

**Sec. 9-100. Definitions.**

The words and phrases used in this article shall have the meaning as set forth in Section 67.2677 RSMo. or, if not defined therein, shall have such meanings as established by city code.  
(G.O. 2266, 1-14-08)

**Sec. 9-101. Franchise fee.**

Pursuant to Section 67.2689 RSMo., and as partial compensation for use of the city's public rights-of-way, each video service provider or other person providing cable services or video services within the city shall, to the extent permitted by law, pay to the City a fee of five percent of the gross revenues from such video services provided in the geographic area of the city. Such payment shall be made as required by Section 67.2689 RSMo. The city shall have the right to audit any video service provider as authorized by Section 67.2691 RSMo. Late payments shall accrue interest due to the city compounded monthly at one and one-half percent or such other maximum rate as may be established by law.  
(G.O. 2266, 1-14-08)

**Sec. 9-102. Customer service requirements.**

All video service providers providing service within the city shall adopt and comply with the minimum customer service requirements set forth in Section 67.2692 RSMo. Notice or receipt of this article by the video service provider shall be deemed notice of the city invoking such customer service requirements.  
(G.O. 2266, 1-14-08)

**Sec. 9-103. Rights-of-way regulation; indemnification; permits and compliance with other laws.**

Video service providers shall comply with the requirements of Sections 67.2707, 67.2709 and all applicable ordinances and regulations consistent with Sections 67.1830 to 67.1846 RSMo. relating to use of the city rights-of-way. Each video service provider shall indemnify and hold harmless the city and its officers, employees and agents from any loss or damage, including, but not limited to attorneys' fees, as provided in such ordinances or regulations, but in no event less than the obligation on video service providers set forth in Section 67.2695 RSMo. The city may require documentation of such indemnification by written agreement or other instrument to the extent permitted by law. In addition, video service providers shall be subject to and comply with such supplementary provisions relating to placement, screening and location of facilities as provided in Section 31-057, whether on public or private property, and such other applicable laws of the city, except as may be otherwise validly preempted. Notwithstanding any other ordinance to the contrary, no facilities to be used for video services shall be installed without obtaining a permit from the city authorizing the location and plans for such facilities; provided that this provision shall not apply to installation of otherwise lawful and authorized poles or wires.  
(G.O. 2266, 1-14-08)

**Sec. 9-104. Public, educational and governmental channels.**

Each video service provider shall designate a number of channels for public, educational and governmental programming consistent with Section 67.2703 RSMo.; provided that any greater number of channels, as may be required in the incumbent cable franchise or franchise ordinance, shall be required pursuant to Section 67.2703.2 RSMo. The city shall bear no cost

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relating to the transmission, availability or maintenance of such channels unless expressly authorized by the city in writing and approved by the governing body. Incumbent cable operators and other video service providers shall provide support for such public, educational and governmental channels consistent with Section 67.2703.8 RSMo.

(G.O. 2266, 1-14-08)

**Sec. 9-105. Continued obligations.**

The obligations of a cable service provider or video service provider as set forth in any existing cable services or video services franchise or ordinance shall also continue to apply to the full extent permitted by applicable law.

(G.O. 2266, 1-14-08)

**Sec. 9-106. Reservation of rights.**

The city retains all rights in Sections 67.2675 through 67.2714 RSMo., inclusive, and may take any and all actions permitted by law to exercise such rights or to enforce such obligations on providers of video service.

(G.O. 2266, 1-14-08)

**Sec. 9-107. Notice.**

A copy of this article shall be delivered to each video service provider operating in the city after notice to the city that such provider is authorized to provide service within the city; provided that the provisions of this article shall, to the extent permitted by law, not be affected by any claimed or actual failure of a service provider to have received delivery of a copy of this article.

(G.O. 2266, 1-14-08)