

CITY OF
PLATTE CITY

STATE OF
MISSOURI



BILL NO. 2003-04

ORDINANCE NO. 1283

AN ORDINANCE ESTABLISHING REGULATIONS FOR THE USE OF THE RIGHTS-OF-WAY TO CONSTRUCT, OPERATE, AND/OR MAINTAIN CABLE SYSTEMS, ESTABLISHING REQUIRED TERMS FOR GRANTING CABLE SERVICES FRANCHISES AND ESTABLISHING COMPENSATION FOR SUCH USE OF THE RIGHTS-OF-WAY.

WHEREAS, Missouri statutes and the Cable Act authorize the City to franchise and regulate the use and occupancy of Rights-of-Way for placement of Cable Systems as hereinafter defined, and to require compensation and to adopt rules and regulations regarding such use and occupancy; and

WHEREAS, the City finds that development of competitive Cable Systems and Services has the potential of having great benefit and impact upon the Residents and businesses of the City. Because of the complex and rapidly changing technology associated with Cable, the City further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers regarding Cable Service that are vested in the City or such Persons as the City designates; and

WHEREAS, in order to ensure that the City and its residents receive state of the art Cable Services and capabilities as this technology further evolves, all Cable Franchises to the extent set forth herein shall be subject to this Ordinance and should be subject to periodic review and modifications to keep current with changing law, technology and services.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF PLATTE CITY, MISSOURI AS FOLLOWS:

SECTION 1. The Platte City Code is hereby amended by adding thereto Title IX to read as follows:

Title IX.

CABLE SERVICES CODE

ARTICLE I. GENERAL PROVISIONS

900.100 Title.

This Ordinance may be referred to and cited as the "Cable Services Code" (or herein as the "Code") of the City of Platte City, Missouri.

FILED⁴

AUG 06 2003

Missouri Public
Service Commission

Exhibit No. 24
C- JO-2003-0281
7-15-03 Rptr TLC



900.105 Applicability.

The requirements of this Code shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Code shall be disregarded pursuant to this section except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Code shall be deemed incorporated in each Cable Franchise granted. Nothing in this Code or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid Cable Franchise or contract during the term thereof, whether entered into before or after enactment of this Code, and shall impose obligations on any such Person additional to those included in such Franchise or contract only to the extent permitted by law and to the extent not inconsistent with such Franchise or contract; provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing Cable Franchise. The provisions of this Code shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid Cable Franchise.

900.110 Preservation of Police Power Authority.

Any rights granted pursuant to this Code and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances for the health, safety, and welfare of the public. Franchisees shall be subject to and comply with all ordinances enacted by the City pursuant to Missouri law.

900.115 Indemnification.

As a condition of use of the Rights-of-Way, Franchisees at their sole cost and expense, shall indemnify, protect, defend (with legal counsel representing the City that is acceptable to the City) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City approved a Franchise with Franchisee, the rights granted to Franchisee, or the activities performed, or failed to be performed, by Franchisee under the Franchise or use of the Rights-of-Way, or otherwise, to the extent caused by the Franchisee. This indemnification shall survive the expiration or termination of any Franchise or use of the Rights-of-Way for a period of five (5) years after the effective date of expiration or termination.

900.120 No Cause of Action for Damages Against the City.

A Franchisee shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement

thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the Franchise therein granted; provided that said Franchisee expressly acknowledges that it accepted the rights therein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized therein with Franchisee; provided further that the Franchisee acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Franchisee acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms and conditions hereof and of its Franchise and is willing to, and does accept, all of the risk attendant to said provisions, terms and conditions.

900.125 Compliance With Laws.

To the extent not inconsistent with Code Section 900.200E, in performing activities and exercising its rights and obligations under any Franchise, Franchisees shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

900.130 Enforcement; Attorneys' Fees.

The City shall be entitled to enforce this Code and any Franchise through all remedies lawfully available, and Franchisee shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Franchisee is determined judicially to have violated the material terms of this Code or any Franchise.

900.135 Relationship of the Parties.

Under no circumstances shall any Franchise authorized by this Code be construed to create any relationship of agency, partnership, joint venture or employment between the parties.

900.140 Defined Terms.

For purposes of this Code, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. "Access Facilities" means:

1. Channel capacity designated for non-commercial public, educational or governmental access use; and
2. The facilities and equipment for the use of such channel capacity.

- B. **"Affiliate"** means a person that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with another person. The term "own" means to own an equity interest, or the equivalent thereof, of ten percent (10%) or more. Affiliate shall not mean any creditor of a Franchisee solely by virtue of its status as a creditor.
- C. **"Basic Cable Service"** means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).
- D. **"Cable Act"** means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.
- E. **"Cable Franchise"** means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.
- F. **"Cable Franchisee"** means a Person who is granted a Cable Franchise to construct, operate or maintain Cable Facilities or provides Cable Services by use of the Rights-of-Way, and that Person's agents, employees, lawful successors, transferees or assignees.
- G. **"Cable Franchise Fee"** means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Franchisee or its Cable Subscribers, or both, pursuant to this Code or any franchise agreement. The term "Cable Franchise Fee" does not include: (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 Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Cable Franchisee for public, educational or governmental ("PEG") Access Facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.
- H. **"Cable Home Wiring"** means the internal wiring contained within the premises of a Subscriber which begins at the demarcation point as established by the FCC. Cable home wiring includes passive splitters on the Subscriber's side of the demarcation point, but

does not include any active elements such as amplifiers, converters or decoder boxes, residential gateways, ethersets or remote control units.

- I. **"Cable Internet Services"** means the offering of direct access by a Cable System to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Code, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Cable Franchise. Pending any legally binding determination to the contrary, all payments made to the City prior to the date of such determination attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use of the City's Rights-of-Way.
- J. **"Cable Service" or "Service"** means:
1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and
 2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; and
 3. Cable Internet Services unless it is conclusively determined by a final and unappealable judicial or administrative order or decision that such services are not a Cable Service.
- K. **"Cable Services Code"** means the laws, ordinances and regulations enacted by the City establishing regulations for the use of the rights-of-way to construct, operate, and/or maintain cable systems and establishing required terms for granting cable services, franchises and establishing compensation for such use of the rights-of-way as may be from time to time in effect and as amended.
- L. **"Cable Television System, Cable System" or "System"** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:
1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
 2. A facility that serves Subscribers without using any public Rights-of-Way; or
 3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. §541(c)) to the extent such

- facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
4. An Open Video System that complies with Section 653 of the Cable Act; or
 5. Any facility of any electric utility used solely for operating its electric utility system.
- M. **"Capital Costs"** means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.
- N. **"Channel"** means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.
- O. **"City" or "Grantor"** means the City of Platte City, Missouri.
- P. **"Code"** means this "Cable Services Code" and all provisions herein established by this Ordinance.
- Q. **"Collocation"** means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).
- R. **"Communications Service"** means the transmission of writing, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, apparatus and services (among other things, the receipt, forwarding and delivery of Telecommunications) incidental to such transmission. This term does not include "Cable Service," as defined under this Agreement. All providers of Communications Service that own or control their own facilities within the Rights-of-Way shall be required to obtain a separate Franchise from the City.
- S. **"Complaint"** means any oral, written or electronic, allegation, or assertion of customer or consumer dissatisfaction made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is not in compliance with its Franchise or this Code.
- T. **"Converter"** means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

- U. **"Direct Incremental Costs"** means the costs actually incurred by a Cable Franchisee in meeting an obligation under its Franchise which the Franchisee would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.
- V. **"Drop"** means the cable or cables that connect the network interface device on the Subscriber's property to the nearest feasible point on the Cable System in order to receive service.
- W. **"Educational Access Facilities"** means
- A. Channel capacity designated for educational access programming; and
 - B. The facilities and equipment for the use of such channel capacity as specified in a Franchise Agreement.
- X. **"Facilities"** means any portion of a Cable or OVS System located in, along, over, upon, under or through the Rights-of-Way.
- Y. **"FCC"** means the Federal Communications Commission or a designated representative.
- Z. **"Franchise"** means the rights and obligations extended by the City to a Person to own, lease, construct, maintain, or operate a Cable System in the Right-of-Way within the Franchise Area for the purpose of providing Cable Services. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of communications services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.
- AA. **"Franchise Agreement"** means a Cable Television Franchise granted to a Franchisee.
- BB. **"Franchise Area"** unless otherwise specified in the applicable Franchise, means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- CC. **"Franchise Fee"** means any tax, fee or assessment of any kind imposed by the City on Grantee or its Subscribers, or both, solely because of their status and activities as such. The term "Franchise Fee" does not include: (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 that is unduly discriminatory against cable operators or cable Subscribers); (ii) Capital Costs that are required by a Franchise Agreement to be incurred by Grantee for public, educational or

governmental ("PEG") Access Facilities; (iii) requirements or charges incidental to the award or enforcement of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, compliance audits, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

DD. **"Governing Body"** means the Board of Aldermen of the City of Platte City, Missouri.

EE. **"Government Access Facilities"** means:

- A. Channel capacity designated for governmental access programming; and
- B. The facilities and equipment for the use of such channel capacity as specified in a Franchise Agreement.

FF. **"Grantee"** means any franchisee or its lawful successors, transferees or assigns.

GG. **"Grantor"** means the City of Platte City, Missouri, provided that the City may delegate the day-to-day administrative functions of a Franchise and any associated ordinances to appropriate City departments.

HH. **"Gross Revenues"** means any revenue actually received by the Grantee, or by any other entity that is a Cable Operator of the Cable System including Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include revenue derived from pay cable fees, installation and reconnection fees, Franchise Fees collected from Subscribers; leased channel access fees; Converter rentals; revenue from Cable Internet Service (unless it is determined by applicable law that it is not a Cable Service); revenue from home shopping to the extent conducted through a Cable Service; all Cable Service lease payments from the Cable System; payments or other consideration received by the Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Gross Revenues shall include revenue received by any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligations under a Franchise to pay the applicable Franchise Fees. Revenues which are not directly attributable to specific Subscribers, including but not limited to leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Grantee's System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Such allocation methodology shall be subject to the approval of the Grantor. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extent allowed by applicable law; (iii) any taxes on Services furnished by Grantee which

are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit.

In determining the Gross Revenue from Home Shopping where the Cable System serves subscribers both within and without the City limits with the same zip code, that portion of the Gross Revenue to which the Franchise Fee shall apply shall be computed on a pro rata basis based upon the total number of subscribers located within the City's limits as compared to the total number of subscribers served with the same zip code.

- II. **"Institutional Network" or "I-Net"** means a communication network which is constructed or operated by Cable Franchisee and which is generally available only to Institutional Users. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.
- JJ. **"Institutional Network Services"** means the provision of an I-Net by a Cable System operator to governmental, educational and other Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated voice, video, data and telephony channels connecting and interconnecting user facilities.
- KK. **"Institutional Users"** means governmental, educational, and other non-profit publicly funded users delineated in the individual Cable Franchise, as may be amended from time to time with the consent of the Cable Franchisee.
- LL. **"Lockout Device"** means a device by which the Subscriber can prohibit viewing of a particular cable service during periods selected by the Subscriber.
- MM. **"Master Cable Services Regulatory Ordinance" or "MCSR Ordinance"** means the City's Cable Services Code developed to govern all cable television franchises granted or renewed after or simultaneously with the effective date of such ordinance and all amendments thereto.
- NN. **"Non-Commercial"** means channels or programming that are operated on a non-commercial or not-for-profit basis in a manner consistent with the rules and regulations of the national Public Broadcasting System, and applicable law.

- OO. **"Normal Business Hours"** means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.
- PP. **"Normal Operating Conditions"** means those Cable Services offered and controlled by the Cable Franchisee or those conditions that are within the control of a Cable Franchisee. Those conditions which are ordinarily within the control of Cable Franchisee include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those conditions that are not within the control of Cable Franchisee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.
- QQ. **"Open Video Services" or "OVS"** means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
- RR. **"Other Programming Service"** means information that the Grantee makes available to all Subscribers generally.
- SS. **"Person"** means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.
- TT. **"Public Access Facilities"** means:
- A. Channel capacity designated for non-commercial public access programming by persons from the community; and
 - B. The facilities and equipment for the use of such channel capacity as specified in a Franchise Agreement.
- UU. **"Public Building"** means any building identified in the applicable Franchise which is owned or for the greater part occupied by the City or on behalf of the City by other governmental units performing traditional municipal governmental functions.
- VV. **"Renewal"** means a new Cable Franchise granted to an existing Franchisee.
- WW. **"Reports"** means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Cable Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Franchisee identifies specific information as such.

- XX. **"Response Time"** means the period between when a problem is reported and/or a request for action is made by a Subscriber or the Grantor and when the action is commenced by the Grantee.
- YY. **"Resident"** means any Person residing in the City.
- ZZ. **"Rights-of-Way"** means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as otherwise provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal office building property or public works facilities.
- AAA. **"Right of Way Ordinance" or "ROW Ordinance"** means "the City of Platte City's Ordinances regulating the excavation, construction and use of the Rights-of-Way by all persons in the City, as they now exist or may hereafter be amended.
- BBB. **"Service Interruption"** means the loss of picture or sound on one or more Channels on the Cable System.
- CCC. **"Standard Installation"** means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.
- DDD. **"Subscriber"** means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Cable Franchisee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Cable Franchisee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Code or Franchise.
- EEE. **"Telecommunications Act"** means the Telecommunications Act of 1996 codified at Title 47 of the United States Code.
- FFF. **"Trained Representative"** means employees of a Cable Franchisee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

ARTICLE II. CABLE SERVICES FRANCHISE REQUIREMENTS

900.200 Cable Franchise Requirements.

- A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless applicable federal or State law prohibits the City's enforcement of such a requirement. Any such Person shall be subject to a fine of \$500 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Code to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Cable Franchisee who has submitted a proposal for renewal of its Franchise unless the proposal has been denied by a final and unappealable decision.
- B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy the Rights-of-Way for the purposes of providing Cable Services and Cable Internet Services. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party without the consent of such party, nor shall a Franchise excuse Cable Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third party. To the extent not inconsistent with this Code, all Franchises shall be deemed to incorporate and be limited by the provisions of this Code and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of communications services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.
- C. **Franchise Not Exclusive.**
1. Any Cable Franchise granted by the City shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Code and applicable federal and state law.
 2. The terms and conditions of any Cable Franchises granted or renewed after the effective date of this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed subject to this Ordinance, when taking into consideration and where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided for herein, nor shall it be deemed to create any cause of action or claim of breach for any party.
4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any proposal to serve all or part of existing Cable Franchisee's Franchise area, specifying the date, time, and place at which the City will hold a public hearing on the application for an additional Franchise. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in its Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.** Every Cable Franchise shall apply to the entire territorial area of the City, as it exists now or may later be configured unless the specific Franchise Agreement provides otherwise.

E. **Federal, State, and City Jurisdiction.**

1. This Code shall be construed in a manner consistent with all applicable federal and state laws.
2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent not inconsistent with applicable law and the reasonable exercise of the City's police powers.
3. The provisions of this Code shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Code shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise or applicable law. A Cable Franchise, whether entered into before or after the enactment of this Code, (including all of Cable Franchisee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Cable Franchisee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Cable Franchisee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this

Code, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Code, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.
- F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee of One Thousand Dollars (\$1,000.00) shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees. The Application Fee shall be used to defray out-of-pocket expenses incurred by the City in connection with processing the Application. If any portion of the Application Fee is not required to defray said out-of-pocket costs, such unused portion shall be refunded to the Applicant.
- G. **Consideration of Initial Applications.** Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the Board of Aldermen.
- H. **Franchise Renewal.** Cable Franchise Renewals shall be in accordance with applicable law. The City and a Cable Franchisee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.
- I. **Grant of Additional Franchise and Competing Service.** The City may issue competing Cable Franchises in the City. The Governing Body of the City shall order publication of a notice in an official City newspaper of a hearing to afford the public in the Franchise Area, including other Rights-of-Way users - as well as the public at large, an opportunity to comment on the proposed Franchise. In considering whether to grant one or more additional Franchises, the City may consider the following issues:
1. The positive and/or negative impact of an additional Cable Franchise on the community.
 2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Franchisee. The purpose of this subsection is to ensure that any competition which may occur among Cable Franchisees will be on terms which when taken as a whole do not give a competitive advantage to one Cable Franchisee over another.
 3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area;

and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Cable Franchisee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.
 5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.
 6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.
 7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.
 8. The disruption of the availability of Cable Service within the City.
 9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.
- J. **Permits for Non-Franchised Entities.** The City may issue a license to a Person other than the Cable Franchisee to permit that Person to traverse any portion of a Cable Franchisee's Cable Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Cable Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

900.205 General Requirements.

A. Recovery of Processing Costs and Expenses.

1. During the term of a Franchise, if the Franchisee initiates a request for approval regarding the transfer of a Franchise or change in control of the Franchisee except to an affiliate, the Franchisee shall reimburse the City for all reasonable out-of-pocket costs, including attorneys' and consultants' fees and costs, incurred by the City as part of City's reasonable review and processing of Franchisee's request,

up to a maximum amount not to exceed \$10,000 per request for approval. Payments of such costs and expenses shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be: (i) "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the City by Franchisee; or (ii) part of the voluntary compensation to be paid to the City by Franchisee.

2. To aid in the analysis and resolution of any future disputed matters relative to a Franchise Agreement or MCSR Ordinance, the City and Franchisee may, by mutual agreement (both as to whether to hire and whom to hire), employ the services of technical, financial or legal consultants as mediators. All expenses incurred by the City and/or the Franchisee in this regard shall be borne by the party incurring same, except as otherwise provided herein.

B. Liability Insurance.

1. Upon the effective date of a Franchise Agreement, the Franchisee shall, at its sole expense, take out and maintain during the life of a Franchise commercial general liability insurance with a company licensed to do business in the State of Missouri with a rating by Best of not less than "A" that shall protect the Franchisee, the City, and the City's officials, officers, and employees from claims which may arise from operations under a Franchise, whether such operations are by the Franchisee, its officers, directors, employees and agents or any subcontractors of Franchisee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Franchisee operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to bodily and personal injury and property damage shall be two million dollars (\$2,000,000.00) combined single limit coverage, and evidence of excess coverage. The following endorsements shall attach to the liability policy:
 - (a) The policy shall cover personal injury as well as bodily injury.
 - (b) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
 - (c) Broad form property damage liability shall be afforded.
 - (d) The City shall be named as an additional insured on the policy.
 - (e) An endorsement shall be provided which states that the City is listed as an additional insured.
 - (f) Standard form of cross-liability shall be afforded.
 - (g) An endorsement stating that the policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City Administrator.

2. Unless otherwise agreed to by the City, through its risk manager, Franchisee shall not permit any subcontractor to commence or continue work until both shall have obtained or caused to be obtained all insurance required under this Section. Said insurance shall be maintained in full force and effect until the completion of construction, and approval thereof by the City.
3. Franchisee shall obtain and maintain workers' compensation insurance for all Franchisee's employees, and in case any work is sublet, Franchisee shall require any subcontractor similarly to provide workers' compensation insurance for all subcontractor's employees, all in compliance with State laws, and to fully protect the City from any and all claims arising out of occurrences on the work. Franchisee hereby indemnifies City for any damage resulting to it from failure of either Franchisee or any subcontractor to take out and maintain such insurance. Franchisee shall provide the City Administrator with a certificate of insurance indicating workers' compensation coverage prior to commencing construction of the system.
4. The City Administrator reserves the right to adjust the limit coverage requirements on the basis of changes in the Consumer Price Index over the life of the Franchise or changes in the law affecting sovereign immunity. Insurance, insurance certificates and evidence of insurance are subject to review and approval of the City Administrator for compliance with these requirements.
5. Franchisee shall submit to city's risk manager documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as the policy with all properly executed endorsements.
6. Any deductible or self-insured retention must be declared to the City Administrator.

C. Indemnification.

1. Except as otherwise provided herein, Franchisee shall indemnify, hold harmless, release and defend City, its officers, and employees from and against any and all lawsuits, claims, actions, demands, damages, disability, losses, expenses including reasonable attorney's fees and other defense costs or liabilities of any nature that may be asserted by any Person or entity, from any cause whatsoever, including City's concurrent negligence, arising out of or in any way connected with the operations, expressly authorized herein, the exercise of the Franchise pursuant to a Franchise, and/or the activities of Franchisee, its subcontractor, employees and agents hereunder. Franchisee shall be solely responsible and save City harmless from all matters relative to payment of Franchisee's employees including compliance with Social Security, withholdings, etc.

2. This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for Franchisee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under a Franchise, or the terms, applicability or limitations of any insurance held by Franchisee.
3. City does not, and shall not, waive any rights against Franchisee which it may have by reason of this indemnification, because of the acceptance by City, or the deposit with City by Franchisee, of any of the insurance policies described in a Franchise.
4. This indemnification by Franchisee shall apply to all damages and claims for damages of any kind suffered by reason of any of the operations referred to in this Section, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
5. Franchisee shall not be required to indemnify City for damages arising solely from the negligence or malfeasance of the City or its officials, boards, commissions, agents, or employees.
6. With respect to any claims that may be subject to Franchisee's obligation to indemnify the City, Franchisee shall immediately notify the City Risk Manager of any and all claims filed against the Franchisee or City and City jointly, and shall provide the City with a copy of the same. Franchisee's obligations hereunder shall be subject to the City giving the Franchisee written notice of its obligation to indemnify the City within seven (7) days of City's receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.
7. Franchisee shall indemnify, defend and hold harmless the City, its officers, agents and employees against any and all claims or challenges brought against the City with respect to the validity of the terms and conditions of a Franchise grant.
8. The fact that Franchisee carries out any activities under a Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duty of defense and indemnification under this section.

D. Security Fund and Performance Bond.

1. At least 30 days prior to the commencement of construction, Franchisee shall deposit into a bank account established by the City and maintain on deposit through the term of a Franchise, the sum of Fifty Thousand Dollars (\$50,000.00), or provide the City with a bond in the same amount, as a security ("Security Fund") for the faithful performance by it of all the provisions of a Franchise, and compliance with all orders, permits and directions of the City, and the payment by

Franchisee of any claim, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. Interest on this deposit shall accrue to the Franchisee. Provision shall be made to permit the City to withdraw funds (or draw against the bond) from such security fund as and to the extent permitted by a Franchise. Franchisee shall not use such security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose.

2. The Security fund may be drawn on by City for those purposes specified in Section 1 hereof. However, prior to any draw by the City on the Security fund, the City must notify Franchisee of its intent to draw on the fund and Franchisee must be given thirty (30) days to correct the situation that caused the City to issue such notice. If correction is not made within thirty (30) days of notice, City may proceed to make such correction and draw upon the Security fund.
3. Within thirty (30) days after notice to Franchisee that any amount has been withdrawn by the City from the security fund and provided Franchisee has waived or failed to exercise its right to appeal said withdrawal, Franchisee shall deposit a sum of money sufficient to restore such security fund (or bond level) to its original amount.
4. Franchisee shall have the right to appeal to the Governing Body for reimbursement in the event Franchisee believes that the security fund was drawn upon improperly. Franchisee shall also have the right of judicial appeal if Franchisee believes the security fund has not been properly drawn upon in accordance with a Franchise. Any amounts the City erroneously or wrongfully withdraws from the security fund as determined by the judicial appeal shall be returned to Franchisee with interest.
5. Prior to the commencement of any construction related to the building, rebuilding, or upgrading of the System required under this Agreement, Franchisee shall execute and deliver to the City, a cash deposit, performance bond, or unconditional irrevocable letter of credit payable to the City, in the face amount equal to Two-Hundred Thousand Dollars (\$200,000.00) as surety for faithful performance under the terms and conditions of Section 4 of the Franchise Agreement. If the bond is on an annual coverage basis, renewal of each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing bond. A surety company of recognized standing and approved by the Risk Manager of the City, authorized to do business in the State of Missouri, must execute the performance bond. If a letter of credit is chosen, it must be in a form acceptable and approved by the Finance Director of the City, on a bank acceptable to the City, and issued in favor of the City. Upon satisfactory completion of the construction, the performance bond shall be released.

6. Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's Rights-Of-Way.
7. Maintenance of the requisite security fund and performance bond shall not in any way limit the liability of the Franchisee for any failure to fully perform its obligations under a Franchise Agreement.

E. Compliance with Applicable Laws and Ordinances.

1. Franchisee shall conform to all generally applicable laws, rules and regulations of the United States and the State of Missouri in the construction and operation of its Cable System and all generally applicable rules and regulations of the FCC.
2. Any right, power, protection, privilege or immunity which is provided, granted or imposed on Franchisee under or by virtue of the Cable Act, as it may be amended or interpreted from time to time after the date hereof, shall remain inviolate and shall be available to Franchisee notwithstanding any contrary provision of a Franchise, and the acceptance of the terms and conditions of a Franchise shall not be construed as a waiver or release by Franchisee or City of any right, power, protection, privilege, immunity or obligation under the Cable Act, the laws or Constitution of the United States or the laws and Constitution of the State of Missouri.

900.210 Design, Services and Capabilities.

- A. **Cable System Design.** Every Cable Franchisee shall offer Cable Service that meets the cable-related needs of the City and are comparable or superior to the Cable Services offered by the Franchisee, or its Affiliates, to subscribers in any other Kansas City Municipal or Kansas City Metropolitan area. The Cable Franchise shall incorporate a description of the Cable Franchisee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.
- B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in Section 900.220.J.1 in this Ordinance unless otherwise specified in the Franchise.
- C. **Drops To Public Buildings.** Unless the Cable Franchisee and City agree in a Cable Franchise Agreement to terms whereby Franchisee provides other alternative public services or I-Net facilities to meet the cable related needs of the City, Franchisee shall provide at no charge Cable Services as set out in the following subsections 1, 2 and 3.
 1. Every Cable Franchisee shall provide installation of at least one (1) Cable Drop,

and one (1) outlet and provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools and public libraries shall also receive one (1) Cable Drop and one (1) outlet and monthly Basic Cable Service at no charge, subject to the above 200 foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Cable Franchisee shall complete construction of the Drop and outlet within one hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Cable Franchisee at the cost of Cable Franchisee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Cable Franchisee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Cable Franchisee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Cable Franchisee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.
3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Cable Franchisee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service by the Cable Franchisee within the Franchise Area, such Cable Franchisee shall provide upon written request one courtesy cable modem with Cable Internet Service without charge to every State accredited K-12 public school and public library in the Franchise Area, where the Drop does not exceed 200 feet, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use of Cable Franchisee's Facilities.** Subject to any applicable state or federal regulations, the City shall have the right to install and maintain, upon the poles and within the underground pipes and conduits of a Cable Franchisee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by City shall not interfere with the current or future use by Cable Franchisee or any pre-existing user

or lessor of Franchisee's facilities; (b) such use by City is restricted to non-commercial public purposes; and (c) City takes reasonable precautions to prevent any use of Cable Franchisee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, utility, and/or signal systems, but not for commercial Cable System purposes in competition with the Cable Franchisee.

- F. **Upgrade of System.** Every Cable Franchisee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.
- G. **Emergency Alert Capability.** Every Cable Franchisee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that if the FCC at some future date eliminates the current regulations the City and Cable Franchisee shall mutually agree upon the applicable standard on a going forward basis.
- H. **Periodic Review.** The City and any Franchisee shall engage in a "periodic review" to evaluate changes in law, technology or service, and reasonable procedures for mutually agreed upon modifications to the Cable Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.
- I. **Closed Captioning and Descriptive Audio Service.** Every Cable Franchisee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.
- J. **Standby Power.** Within twelve (12) months of activation of the System, the Cable Franchisee shall provide standby power generating capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System headend. Every Cable Franchisee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.
- K. **Status Monitoring.** Every Cable Franchisee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.
- L. **System Capabilities.**
 - 1. The design and construction of every Franchisee's Cable System shall at the Franchisee's option consist of a Hybrid Fiber Coax (HFC) system or a Very High Speed Digital Subscriber Line (VDSL) system. If Franchisee deploys a HFC system, then at a minimum it will provide the capabilities of an 750 MHz hybrid

fiber optic-coaxial system architecture and will begin with the effective date of a Franchise and shall be completed throughout the City in accordance with the density and line extension requirements of this Agreement, and activated to provide Services according to a construction plan and schedule developed by the Franchisee and approved in advance by the City. If a VDSL system is deployed by Franchisee, then a City-wide digital television system utilizing a fiber-optic infrastructure and fiber-to-the-node architecture with a capacity of not less than one point two gigabits per second (1.2 Gbps) and capable of accommodating 80 standard video channels will be constructed. Additionally the digital television system shall be suitable for providing broadband capability including Internet Access via VDSL. Construction and activation of the Cable System will be completed forty-two (42) months from the effective date of a Franchise Agreement. Franchisee shall commence construction within twelve (12) months following the effective date of a Franchise. For purposes of a Franchise, "substantially completed" shall mean service to all residential areas within the City having a density of twenty (20) homes per one cable mile. During the construction phase of the Franchise, Franchisee shall comply with all customer service obligations with respect to customers whose premises are passed by portions of the Franchisee's network which are fully activated, tested and available for Service. In constructing and activating its Cable System the Franchisee shall not discriminate between different areas of the City on the basis of race, creed, religion or income level.

2. Each Franchisee shall, at a minimum, retain such bandwidth capabilities throughout the term of a Franchise. To the extent technically and economically practical, a Franchisee shall progressively improve the system capabilities.
3. Each Franchisee shall make an annual update presentation to the Governing Body regarding, at a minimum, its services and planned developments and changes, industry developments, competition and other topics reasonably requested to be included in the presentation by the City.

M. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable federal law.

900.215 Institutional Network, And Public Educational And Governmental Access Or "PEG Access"

A. **Support for Local Cable Related Needs.**

1. **Public, Educational and Governmental Access.**
 - (a) **Access Channels.** Each Franchisee shall offer the following access channels to each of its Subscribers who receive all or any part of the Cable Services offered on the Cable System.

- (i) Public Educational Access -- one (1) specifically designated Channel for local educational access use to be administered by the public school district(s) located within the Franchise Area.
 - (ii) Local Educational Access -- one (1) specifically designated Channel for local educational access use to be administered by the public school district(s) located within the Franchise Area.
 - (iii) Government Access -- one (1) specifically designated Channel for Government Access use by the City. The City shall be responsible for the oversight and programming of the Government Access Channel. The City may jointly utilize this channel with other jurisdictions served by a common headend of the Franchisee.
- 2. Remote Origination. Signal input points shall be made available at one (1) site for live program origination on the Government and local Educational Access channels. Each access channel shall be activated to enable the City and schools to remotely initiate and scramble programs and services. Franchisee will provide City and schools with proper formats and protocols to facilitate broadcast on government and educational access channels.
- 3. Additional Access Channels. In addition to the educational and government access channels described above, if desired by the City, Franchisee shall make one additional access channel available to the City upon request by the City for either educational, governmental or public access purposes.
- 4. Unused Channels. If demand for use of the access channels does not warrant activation of all such channels, public and educational access programming may be combined on one or more channels. In no case, however, shall the government access channel(s) or government programming be combined with any other use except by express written permission of the City of Platte City, Missouri, and only upon a demonstration that there is no suitable alternative capacity available on other access channels.
- 5. Interconnection.
 - (a) Each Franchisee shall cooperate with other cable providers in the City and the surrounding area to interconnect its network where feasible in order to facilitate shared access programming on government and local educational access channels.
 - (b) The Cable System shall be designed to enable cablecasting of all access or local origination channels throughout the entire City without respect to the specific cable operator.

- (c) Each Franchisee shall provide other franchised cable operators within the City with a PEG feed at a mutually agreeable location.
 - (d) Each Franchisee and City shall jointly be responsible for coordination of technical arrangements with other cable service providers in the City and the surrounding area. The City shall utilize its best efforts to facilitate such interconnection.
- 6. Administration. Oversight and administration of the access channels except as otherwise specified in other than the City channel, shall be originally carried out by the Franchisee, however, at any time after commencement of a Franchise, the City may elect to transfer responsibility for these channels to itself or a designated Community Access Corporation (CAC).
- 7. Franchisee Support for Local Programming. The Franchisee shall provide the following support for access:
 - (a) Reservation, dedication, and use of all Access Channels required by a Franchise.
 - (b) Franchisee or its designee shall provide and maintain the link necessary to insert public, educational and government access programming on the Subscriber network and all equipment necessary in the headend to allow quality playback that meets acceptable broadcast standards. Franchisee or its designee shall also provide cable programming transmission facilities necessary for introducing access programming onto Franchisee's Cable System for distribution to Subscribers.
- 8. Access Channel Designations. Each Franchisee and City will work together to assign mutually agreeable channel designations for access channels.
- 9. Governmental Access Rules and Procedures. The use of government access channels shall be in accordance with and subject to the rules and procedures adopted by the Franchisee or the City.
- 10. Assistance with Soliciting Contributions. Once per year, if requested by the City, the Franchisee shall provide its Subscribers an access promotion.
- 11. Technical Quality. Franchisee shall maintain all access channels, including interconnected access channels, at the same level of technical quality and reliability required by the FCC's rules for residential cable television Subscribers.
- 12. Proof of Performance Testing. To ensure high quality service on Access Channels, copies of results of FCC proof of performance testing of the Cable System shall be made available to the City throughout the term of a Franchise upon request. Included in such proof of performance testing, to the extent

feasible and subject to FCC rules and regulations, Franchisee will designate Cable System taps corresponding to each of the public buildings where programming is originated.

13. Change in Technology. In the event Franchisee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which directly or indirectly affects the transmission or signal quality of PEG access services or programming, the Franchisee shall at its own expense take all necessary technical steps to ensure that the capabilities of PEG access services and programming are not diminished or adversely affected by such change.

B. Institutional Network, Access Channels.

1. Every Cable Franchisee shall, subject to applicable law, provide or fund an Institutional Network, or PEG access facilities or other public interest services, or some combination of the same, for use by Institutional Users. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.
2. Every Cable Franchisee shall also provide channel capacity and support for public, educational and government access channels, as specified herein. All such PEG access channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Code, absent the express written consent of the City, Franchisee shall transmit PEG access channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier.

900.220 Technical Standards and Customer Service Practices.

A. General Technical Standards and Customer Service Practices.

1. To the extent set forth herein this Code incorporates Cable Service technical standards and establishes customer service practices that every Cable Franchisee must satisfy.
2. Every Cable Franchisee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Cable Franchisee shall at all times assist and cooperate with City in explaining, interpreting and understanding such records or reports.

- B. Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be

witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Cable Franchisee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Cable Franchisee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Cable Franchisee and its services. Such service center shall be open at least during Normal Business Hours. Cable Franchisee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.
2. Every Cable Franchisee shall have Trained Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.
3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.
4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis.
5. Under Normal Operating Conditions, a Cable Franchisee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.
6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within fifteen (15) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.
2. The appointment window alternatives for installations, service calls, and other installation activities will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Cable Franchisee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.
3. A Cable Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.
4. If a Cable Franchisee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. Repairs and Interruptions.

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Cable Franchisee, every Cable Franchisee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Cable Franchisee must begin actions to correct other service problems on the business day following notification of such service problems.
2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.
3. Work on service problems, excluding conditions beyond the control of a Cable Franchisee, must begin by the next business day after notification of the problem.
4. Outside repairs to cable plant which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within the next business day after the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.
5. A Cable Franchisee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Cable Franchisee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between midnight and 6 a.m. To the extent that specific neighborhoods will be affected by a planned

outage, such as during an upgrade, the Cable Franchisee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request a Cable Franchisee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of midnight and 6 a.m., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund from any disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber and verification by Subscriber that loss has occurred describing the time, date and nature of the disruption experienced.
7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.
8. No charge shall be made to a Subscriber for any service call relating to Cable Franchisee owned and Cable Franchisee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Cable Franchisee to have been:
 - (a) Caused by the negligence, malicious destruction, illegal tampering, or theft of Cable Service or of cable equipment by the Subscriber; or
 - (b) A problem established as having been non-Cable System or Cable Service in origin.
 - (c) A Cable Franchisee may also assess a service charge for service calls in instances where the problem was not caused by the Cable Franchisee.
9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Cable Franchisee's Cable System that are located underground, shall be placed in such locations pursuant to City Code, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the Cable System. Except for a Cable Franchisee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time within the City, except for the express purpose of being immediately connected to the Cable System of Cable Franchisee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Cable Franchisee within the City during Normal Operating Conditions.

F. Disconnections and Downgrades.

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Cable Franchisee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Cable Franchisee shall not disconnect. Provided, however, that this Section does not apply to Subscribers disconnected as a result of insufficient funds.
2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice and the above notification of intent to disconnect in subsection 1 above shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service or other violations of law.
3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.
4. No Subscriber may be disconnected due to a Cable Franchisee's failure to timely or correctly post payments.
5. Any disconnection requiring a cable service representative on site shall be performed at reasonable times. Any disconnection requested by the Subscriber at a particular time shall be deemed "reasonable" no matter when the same occurs.
6. Absent extenuating circumstances, a Cable Franchisee is not required to reconnect a Subscriber with an undisputed outstanding balance.
7. A Cable Franchisee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.
8. A Cable Franchisee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Cable Franchisee may effectuate such disconnection without advance notice, provided that a Cable Franchisee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied and the Subscriber was not the cause of such leakage, the Cable Franchisee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage, the Cable Franchisee may charge a reasonable

reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Cable Franchisee may not impose any charge for service delivered after the requested date of disconnection. Notwithstanding the foregoing, a Cable Franchisee may impose a charge for service delivered after the requested date of disconnection if the terms and conditions of subscribing to such service were clearly disclosed to the Subscriber at the time of subscription. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.
10. Nothing in this Chapter or Code shall limit the right of a Cable Franchisee to reasonably deny Cable Service to any household or individual which has a negative credit or cable service history with the Cable Franchisee or another Person as verified by a credit reporting agency, which may include non-payment of bills, theft or damage to the Cable Franchisee's or other Person's equipment, outstanding balances, or threats or assaults on employees of the Cable Franchisee in the course of their employment.

G. Communications Between Cable Franchisee and Subscribers.

1. Notifications to Subscribers:

- (a) Every Cable Franchisee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:
 - (i) Products and services offered;
 - (ii) Prices and options for programming services and conditions of subscription to programming and other services and facilities.
 - (iii) Installation and service maintenance policies;
 - (iv) Instructions on how to use services;
 - (v) Channel positions of programming offered on a System; and
 - (vi) Billing and complaint procedures, including the name, address and telephone number of the Franchisee.
- (b) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming services, or Channel positions, if the change is within the control of the Cable Franchisee. All such notice shall be provided in writing by any reasonable means. In addition, the Cable Franchisee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this Section. Notwithstanding the foregoing or any provision of this Code to the contrary, a Cable Franchisee shall not be required to provide prior notice

of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Cable Franchisee and the Subscriber.

2. **Billing.**

- (a) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, basic and premium Service charges and equipment charges.
- (b) Bills must clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (c) In case of a billing dispute, a Cable Franchisee must respond to a written complaint from a Subscriber within thirty (30) calendar days.
- (d) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Cable Franchisee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

- (a) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:
 - (i) The date after which the fee will be imposed if the balance is not paid; and
 - (ii) The amount of the fee that will be imposed; and
- (b) The fee for the delinquent payment shall not exceed the state statutory maximum as may be amended from time to time.

4. **Credits and Refunds.** Credit or refund checks will be issued promptly, but no later than either:

- (a) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- (b) The return of equipment supplied by the Cable Franchisee if Cable Services are terminated.

- H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Cable Franchisee shall prepare as necessary and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a periodic written summary of the type of Complaint(s) and where appropriate their resolution. Such Complaint logs and summaries shall be on file at the office of Cable Franchisee for three (3) years, and available for inspection by the City upon request.
- I. **Parental Control.** Every Cable Franchisee shall make available to any Subscriber upon request a "lockout" device, which may be included within the Converter, for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge by sale or lease. A Cable Franchisee may, however, require a reasonable security deposit for the use of such a device.
- J. **Line Extension Policy.**
1. A Cable Franchisee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion, or economic condition. A Cable Franchisee shall serve all areas of the City with populations of at least twenty (20) dwelling units per cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in an area annexed subsequent to the adoption of this Code, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.
 2. **Special Agreements.** Nothing herein shall be construed to prevent a Cable Franchisee from serving areas not covered under this section upon agreement with developers, property owners or residents.
- K. **Customer Service Reporting Requirements.** The City may require, upon reasonable request, that a Cable Franchisee periodically furnish to City semi-annual reports and any other reasonable information relevant to the Cable Franchisee's compliance with the customer Service requirements of this Chapter measured on a quarterly basis to the extent that the Cable Franchisee maintains such reports and information.

900.225 Operation and Maintenance.

- A. **Open Books and Records.** Every Cable Franchisee shall cooperate with the City with respect to City's administration of this Code and any applicable Franchise subject to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon five (5) business days notice, during Normal Business Hours, all books, records, maps, plans, certified financial statements, service complaint logs, performance test results and other existing like materials of a Cable Franchisee that relate and are material to the operation of the Cable Franchisee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Code or the Cable Franchisee's Franchise. A Cable Franchisee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Cable Franchisee as confidential to the extent permissible under state and federal law and will advise said Cable Franchisee of any third-party requests for such information so that Franchisee may take appropriate and authorized steps to protect its rights. All such review of a Cable Franchisee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.
- B. **Communications with Regulatory Agencies.** Copies of all non-confidential petitions, applications, communications, and reports submitted by a Cable Franchisee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Cable Franchisee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.
- C. **Annual Reports.**
1. Upon request, a Cable Franchisee shall make available to City, within ninety (90) days of the end of each of the applicable Cable Franchisee's fiscal years during the term of a Franchise, the following:
 - (a) A revenue statement certified by a representative of the Cable Franchisee showing the Gross Revenues of the Cable Franchisee for the preceding fiscal year;
 - (b) A current list of names and addresses of each officer and director and other management personnel of the Cable Franchisee;
 - (c) A statement of the Cable Franchisee's current billing practices and charges;

- (d) A copy, if any, of the Cable Franchisee's current Subscriber Service contract; and
- (e) A copy of Annual Reports to stockholders, if any, for the operating company and parent company.
- (f) An index of all technical and operational reports that Franchisee is required to develop and maintain in its public file with respect to its Cable System pursuant to federal law.

Other than subsection (f), all of the above information shall not be required annually unless there is a change after the first filing.

- 2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Cable Franchisee that are reasonably necessary for the enforcement of a Franchise. A Cable Franchisee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Cable Franchisee if the audit reveals an underpayment of five percent (5%) or more.
- 3. Any review or audit of a Cable Franchisee's books and records shall be performed by an independent party if the City itself enters into business as a competitor to a Cable Franchisee. In such case, all confidential information obtained during the audit shall not be disclosed to the City or any other party.

D. Service Contract and Subscriber Information.

- 1. A Cable Franchisee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Cable Franchisee to exercise its rights and perform its obligations under this Chapter and its Cable Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Code, federal, state and/or local law, or any applicable rules and regulations.
- 2. Upon request, a Cable Franchisee shall submit to City any standard residential Subscriber contract form that it utilizes. If no written contract exists, a Cable Franchisee shall file with the City a document completely and concisely stating the terms of the standard residential Subscriber contract offered.

900.230 Construction Standards.

A. Construction Standards.

1. Rights-of-Way Construction. Prior to commencing any construction in the City, Franchisee must obtain all necessary permits and licenses required by federal, state and city laws, ordinances and rules, and pay all associated fees. Franchisee shall comply in full with the ROW Ordinance, as may be amended from time to time. A Franchise Agreement shall be deemed to establish supplementary requirements, and to the extent these requirements conflict with the ROW Ordinance or Cable Services Code, the most restrictive requirements shall apply. Further, Franchisee shall comply with all other applicable laws, ordinances, rules and standards relating to the construction, operation and maintenance of a Cable Television System.

- B. Compliance with Laws. At a minimum, and without limitation, Franchisee shall adhere to all building, electrical and zoning codes currently or hereafter in force in the City. The construction, installation and maintenance of the Cable System shall be effectuated by Franchisee in a manner that is consistent with the laws, ordinances and construction standards of the State of Missouri, the Occupational Safety and Health Administration, the National Electrical Safety Code, National Electrical Code, FCC and the Standards of Good Engineering Practices for Measurement of Cable Television Cable Systems of the National Cable Television Association to the extent applicable, as well as all other applicable laws, rules, regulations and ordinances that may be modified or amended from time to time. All open connections on splitters, couplers and other devices shall be properly terminated.

- C. Minimum Interference. All of Franchisee's construction, installation, operation, repair and maintenance, and the arrangement of its lines, cables and other appurtenances, on both public and private property, shall be conducted in such a manner as to cause minimum interference with the rights and reasonable convenience of the public and any property owners that may be affected. In the event of any such interference, the City may require the removal of Franchisee's lines, cables and appurtenances from the Right-of-Way in question, at the sole expense of Franchisee.

- D. Repair of Property. Franchisee shall promptly repair and restore any City or private property which may be damaged as a result of the construction, installation, operation, repair or maintenance of the Cable System. Any such property damaged or destroyed shall be promptly repaired and restored by Grantee, at Franchisee's sole cost and expense to its condition prior to being damaged or shall be replaced by Franchisee with equivalent property.

- E. Erection of Poles Prohibited. Franchisee shall not erect, for any reason, any pole on or along any Rights-of-Way in an existing aerial utility system. Franchisee may obtain the lease of pole space and facilities from the existing utility pole owners. If additional poles in an existing aerial route are required, Franchisee may negotiate with the utility for the installation of the needed poles. Any such addition shall require the advance written approval of the City.

- F. Reservations of Street Rights. Nothing in a Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing or altering any Rights-of-Way, or laying down, repairing or removing water mains or constructing or establishing any other public work. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of poles, wires, conduits, conductors, pipes or appurtenances of Franchisee. If any such property shall interfere with the construction or repair of any Rights-of-Way or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of any Rights-of-Way or any other public improvement, then all such property of Franchisee shall be removed or replaced in such manner as shall be directed by the City so that the same shall not interfere with the public works of the City. Such removal or replacement shall be at the expense of Franchisee, except to the extent funds are made available under applicable law.
- G. Exclusion of Certain Locations/Facilities. Prior to its installation of any System facilities in the Rights-of-Way and after it provides the City with its proposed plans for the facilities, the City may in its discretion designate certain locations or facilities in the Rights-of-Way to be excluded from use by Franchisee for its facilities, including but not limited to ornamental or similar specially-designed streets lights, or other facilities or locations which, in the reasonable judgment of the City are not appropriate for the Franchisee's System facilities, or any other facility or location that in the reasonable judgment of the City Engineer is incompatible with the proposed facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other facilities that have been designated or planned for other use or are not otherwise available for use by Franchisee due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City.
- H. Location, Type and Design of Facilities Subject to Approval. The location and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Unless extraordinary circumstances exist, good cause shall not include authorization for above-ground facilities requiring new poles. Except as provided herein, all Facilities constructed after the date of this Agreement shall be placed underground, and in conduit, where capable, unless existing above ground structures are available. Aboveground pedestals, vaults, antennae or other Facilities may be installed if less than sixty (60) inches above the ground or otherwise only if approved by the City where alternative underground facilities are not feasible or where underground requirements are otherwise waived pursuant to the provisions of this subsection. Existing conduit shall be used where feasible and available. Where reasonable and appropriate and where adequate public Rights-of-Way exist, the Franchisee shall place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and economically feasible. Unless specifically authorized herein or otherwise by the City, wired access point antennae/towers located on the Rights-of-Way or other City owned or controlled property shall not be authorized by

a Franchise, but shall require a separate lease or use agreement with the City. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities.

- I. Notification, Joint Installation and Collocation Requirements. Franchisee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its useable capacity. Franchisee shall further make its installed facilities available to other franchisees on a nondiscriminatory competitively neutral basis consistent with the requirements of federal law.
- J. Aerial Drop Lines. For Subscribers requesting connection requiring a Drop in excess of one hundred twenty-five (125) feet, Franchisee shall extend cable service at a rate not to exceed Franchisee's actual Direct Incremental Cost of installation from its main distribution system.
- K. Clearing Poles and Cables. Franchisee shall have the right to remove, trim, cut and to keep clear of its poles, cables, underground conduits and related equipment the trees in and along the public streets, but, in the exercise of such right, Franchisee shall not cut such trees to any greater extent than is reasonably necessary for the construction, erection, installation, maintenance and use of Cable System equipment. Franchisee shall compensate the City or any private owners of such trees for any damage caused by such trimming that exceeds what is allowed under City Code or permit.
- L. Temporary Disconnections. Franchisee shall be required, at its expense, to protect, support, temporarily disconnect, relocate in or remove from, public streets, lands or places, any property of Franchisee whenever required by City upon reasonable written notice by reason of traffic conditions, public safety, street construction or any other public purpose. If public funds are available to any Person using such street, easement or Rights-of-Way for the purpose of defraying the cost of any of the foregoing, upon request the City shall assist Franchisee in making application for such funds.
- M. Moving Facilities. Franchisee, on the request of the City or any Person holding a building permit issued by the City, or any permit issued by an appropriate State agency, shall temporarily move its wires, cables, poles or other Cable System facilities to permit the moving of large objects, vehicles, buildings or other structures. The expense of such temporary moves shall be paid to Franchisee by the Person requesting the same and Franchisee shall have the authority to require such payment in advance. Franchisee shall be given not less than thirty (30) days advance notice to arrange for such temporary moves, unless emergency conditions warrant otherwise.
- N. Work Performed by Others.

1. Franchisee shall make available to the City the names and addresses of any Person, other than Franchisee, which performs services pursuant to this Agreement; provided, however, that all provisions of this Agreement remain the responsibility of Franchisee.
2. All provisions of a Franchise Agreement shall apply to any subcontractors or others performing any work or services pursuant to the provisions of this Code on behalf of Franchisee.

O. Safety and Mapping.

1. Franchisee shall at all times employ the standard of care attendant to the risks involved, and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury or nuisance to the public or to employees of the Franchisee.
2. All lines, equipment, and connections in, over, under, and upon the Rights-of-Way and private property within the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.
3. Upon completion of any construction, upgrade or rebuild, Franchisee shall provide the City a copy of all strand-and-trench maps, which shall be in digital form, and Franchisee shall include a copy of such information in an electronic copy in a common mapping format, along with traditional hardcopy maps.

P. Duty to Franchisee. Nothing contained in a Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Franchisee's facilities while performing any work connected with grading, regarding or changing the line of any Rights-of-Way or with the construction or reconstruction of any sewer, water or utility system.

900.235 Financial Provisions, Remedies, Procedures and Due Process.

A. Annual Cable Franchise Fee.

1. As compensation for grant of a Cable Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Cable Franchise obligations, every Cable Franchisee shall pay to the City on an annual basis throughout the term of its Cable Franchise, a franchise fee as set forth in the applicable Franchise Agreement.
2. Further, every Cable Franchisee that offers any "bundled" services shall fairly reflect as part of its calculation of applicable Franchise Fees an appropriate and

reasonable division of services among the various services offered. The specific cost accounting for such revenue attribution shall be set out in the individual Franchise or other agreement.

3. Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the Cable Franchisee showing the basis for the computation and a "Cable Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Cable Franchisee's System.
4. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Cable Franchisee or by audit as permitted by this Chapter, the Cable Franchisee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.
5. In the event that any of the quarterly Cable Franchise Fee payments are not timely made, a Cable Franchisee shall also pay the City interest thereon at the then-current prime rate. Said interest to be applied commencing with the forty-fifth (45th) day after the end of the quarter and continuing until all such overdue sums (including interest) are paid.
6. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further sums payable under the provisions of this Chapter, Code or applicable Franchise. All amounts paid shall be subject to audit and re-computation by the City or its designee, at any time upon reasonable notice and specification of the documents requested to be reviewed.

B. Remedies and Enforcement Procedure.

1. Whenever the City has reason to believe that a Cable Franchisee has violated any material provision of this Code or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Cable Franchisee in writing of the violation and demand correction within a reasonable time which shall not be less than thirty (30) days. If the Cable Franchisee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Cable Franchisee fails to correct the violation within the time prescribed, or if the Cable Franchisee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Cable Franchisee shall then be given written notice of a public hearing to be held before the Board of Aldermen. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This

procedure shall apply to all alleged Code or Cable Franchise violations, including those in which grounds for revocation are considered.

2. At the public hearing, the Board of Aldermen shall hear and consider all relevant evidence and thereafter render written findings and a written decision based upon the evidence.
3. In the event the Cable Franchisee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.
4. In the event that a violation exists and that the Cable Franchisee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the City may impose penalties and/or liquidated damages from the Security Fund, as follows:
 - (a) For System construction schedule violations, including, but not limited to provisions relating to initial construction schedules and system upgrade construction schedule, \$500 per day of non-compliance;
 - (b) For all other violations, \$250 per day per violation.

The City shall provide the Cable Franchisee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.

5. In the event that a Cable Franchise is cancelled or terminated by reason of the default of the Cable Franchisee, the security fund deposited pursuant to the Cable Franchise shall remain in effect and available to the City until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the Cable Franchisee.
 6. The rights reserved to the City with respect to the security fund are in addition to all other rights of City, whether reserved by this Code, applicable Cable Franchise, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right City may have.
 7. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations.
- C. **Grounds for Revocation.** In addition to any rights in this Code or applicable Franchise, the City reserves the right to revoke a Franchise, and all rights and privileges pertaining

thereto, in the event that any of the following occur, and the City and a Cable Franchisee are not able to mutually agree upon a cure or alternate remedy:

1. The Cable Franchisee substantially violates any material provision of this Code or its Franchise;
2. The Cable Franchisee practices an act of fraud or deceit upon the City; or
3. The Cable Franchisee becomes insolvent or is adjudged bankrupt.

D. Right of Appeal.

1. Upon the imposition of a penalty or revocation decision, a Cable Franchisee shall have a period of thirty (30) days subsequent to the date of the formal adoption of the decision by the Board of Aldermen within which to file an appeal with a court of competent jurisdiction.
2. During any such appeal period, the Cable Franchise shall remain in full force and effect.

900.240 Foreclosure, Receivership and Abandonment.

- A. **Foreclosure.** Upon the foreclosure or other judicial sale of all or a part of a Cable System, or upon the termination of any lease covering all or part of a Cable System, a Cable Franchisee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Cable Franchisee has taken place, and the provisions of this Code governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.
- B. **Receivership.** The City shall have the right to cancel a Cable Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Cable Franchisee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
1. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the Cable Franchise and remedied all defaults thereunder; and
 2. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Code and applicable Cable Franchise.

900.245 Purchase of System.

If a renewal or extension of a Cable Franchise is denied without further right of appeal, or a Cable Franchise is lawfully terminated, with all rights of appeal exhausted, the City may acquire ownership of the Cable System or effect a transfer of ownership of the Cable System to another Person any such acquisition or transfer shall be in accordance with and to the extent permitted by 47 U.S.C. § 547 as it exists now or may be amended.

900.250 Sale or Transfer of Cable Franchise.

- A. A Cable Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, an ownership interest in or control of a Cable Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably withheld.
- B. Within thirty (30) days of a Franchisee carrying any Communications Service for a reseller of any Communications Services through Franchisee's facilities, Franchisee shall notify City of the name and address of such reseller, the reseller rates or tariffs to be paid to Franchisee relating to such reseller, and provide to City any written commitment, which exists as to the payment of use fees for the revenues attributable to such reseller.
- C. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Cable Franchise or Cable System requiring compliance with this section: (i) the sale, assignment or other transfer of all or a majority of a Cable Franchisee's Cable System assets in the City; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Cable Franchisee by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in Cable Franchisee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Cable Franchisee so as to create a new controlling interest in a Cable Franchisee; and (iv) a Cable Franchisee's agreement to transfer management or operation of the Cable Franchisee or the System to an unaffiliated entity so as to create a new controlling interest in the Cable Franchisee. The term "controlling interest" as used herein means majority equity ownership of a Cable Franchisee.
- D. A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a Cable Franchisee's assets, including, but not limited to, the Cable Franchise, such as in a transaction commonly known as an "initial public offering", shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a Cable Franchise or Cable System and thus shall not require compliance with this section.
- E. In any case where federal law requires the consent of the City to any sale or transfer of ownership of an interest in or control of a Cable Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Code. If the City fails to

render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed denied unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

- F. The City reserves any legal right it has under applicable law to require a Cable Franchisee to pay all costs and expenses incurred by the City in connection with the sale, assignment or transfer of a Cable Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees.

900.255 Rights Of Individuals Protected.

- A. **Discriminatory Practices Prohibited.** A Cable Franchisee shall not deny Cable Service, deny access or otherwise discriminate against Subscribers, programmers, or general citizens on the basis of income level, race, color, religion, national origin, sex or age. Every Cable Franchisee shall strictly adhere to the equal employment opportunity requirements of state and federal laws. Every Cable Franchisee shall comply at all times with all other applicable federal, state and local laws, and all executive and administrative orders relating to non-discrimination.
- B. **Subscriber Privacy.** Every Cable Franchisee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

900.260 Miscellaneous Provisions.

- A. **Rate Regulation.** The City reserves the right to regulate rates for Basic Cable Service and any other services offered over a Cable System, to the extent permitted by federal or state law. A Cable Franchisee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76.933, Subpart N. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.933, Subpart N.
- B. **Rights Reserved to City.** Upon either final non-appealable determination of non-renewal or revocation of a Cable Franchise, City shall have discretion to permit a Cable Franchisee by mutual consent to continue to operate the Cable System for an extended period of time agreed upon by the parties. Any such operation of the System by a Cable Franchisee shall be in accordance with the terms and conditions of this Code and the Cable Franchise, and shall provide the regular Subscriber service and any and all of the services that may be provided at that time.

ARTICLE III RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS

900.300 Rights-of-Way Ordinance.

To the extent not inconsistent with this Code, a Franchisee shall be subject to and comply with the additional or supplementary terms and conditions of the "ROW Ordinance," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of this Code shall be deemed a condition of any Franchise. The provisions of this Article III shall apply as provided herein to Franchisees, and to the full extent permitted by law, additionally to all construction activities in public utility easements.

900.305 Exclusion of Certain Locations/Facilities.

Prior to its installation of any Facilities in the Rights-of-Way and after it provides the City with its proposed plans for the Facilities, the City may in its discretion designate certain locations or facilities in the Rights-of-Way to be excluded from use by Franchisee for its Facilities, including, but not limited to, ornamental or similar specially-designed street lights, or other facilities or locations which, in the reasonable judgment of the City, do not have electrical service adequate or appropriate for the Franchisee's Facilities or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the City is incompatible with the proposed Facilities or would be rendered unsafe or unstable by the installation. The City may further exclude certain other facilities that have been designated or planned for other use or are not otherwise available for use by Franchisee due to engineering, technological, proprietary, legal or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with the reasonable requirements of the Franchisee, the City will cooperate in good faith with Franchisee to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for Franchisee. All such determinations shall be in writing and appealable to the City Administrator as provided in the ROW Ordinance.

900.310 Location of Facilities Subject to Approval.

To the extent not inconsistent with this Code, the location of all Facilities shall be subject to the reasonable review of the City and to all existing ordinances of the City. The location of pedestals, vaults, nodes or ground-mounted Facilities, including backup power supplies, to the extent permitted pursuant to the City's ROW Ordinance, and other applicable permitting/zoning requirements shall be provided to the City for review at least fifteen days in advance of actual construction. The City shall work with the Franchisee to identify possible alternate locations for placement of such facilities. Unless specifically authorized herein or otherwise by the City, antennae or antennae structures having a height of thirty-five (35) feet or greater located on the Rights-of-Way, or any antennae on other City owned or controlled property, shall not be authorized by a Franchise, but shall require a separate Lease or Use agreement with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City, including as to location and design. City height limitations, applicable zoning restrictions and general city policies with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

900.315 Erection of Poles Prohibited.

Franchisee shall not erect, for any reason, any pole on or along any Rights-of-Way in an existing aerial utility system where poles are otherwise available on terms and conditions that are reasonable under applicable FCC or Missouri Public Service Commission standards, not including authorized service drop poles. Franchisee may obtain the lease of pole space and facilities from the existing utility pole owners. If additional poles in an existing aerial route are required, Franchisee may negotiate with the utility for the installation of the needed poles, provided, however, that Franchisee may not install its facilities on any such utility pole if the utility has not obtained all requisite authorizations from the City.

900.320 Facilities Requirements; Planned Infrastructure.

- A. Prior to constructing any new or additional conduit within any major collector or any arterial street corridor as designated on the master street plan of the City's comprehensive plan, and which street the City has designated as a high-density corridor, Franchisee shall, unless obtaining a written waiver from the City, make a good faith effort to ascertain whether existing or planned conduit exists that the Franchisee could reasonably utilize to meet its needs. Provided, however, if during the term of a franchise the City adopts a generally applicable ordinance requiring all users of the Rights-of-Way to provide mapping of reserve conduit prior to constructing any new conduit, Franchisee will be required to certify in writing to the City that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the Rights-of-Way as to the availability of existing or planned conduit that the Franchisee could reasonably utilize to meet its needs, and that no such conduit is available or planned within the near future at a reasonable cost.
- B. Upon determination that no such conduit is available, Franchisee may install new conduit pursuant to the following requirements:
 - 1. Unless otherwise provided under the rules and policies adopted pursuant to the ROW Ordinance, a Franchisee shall provide written notification of the proposed construction activity to all existing utilities Franchisees, and other known service providers who shall have thirty (30) days from the receipt of such notification to indicate in writing to the City and the Franchisee as to whether they desire to jointly undertake the construction of such conduit or otherwise co-locate their facilities at such time. Any utility or Franchise holder electing to jointly construct or co-locate its facilities with that of Franchisee shall share in the *pro rata* costs of such construction or co-location of facilities reasonably incurred by Franchisee and shall participate in the project on reasonably the same time schedule established by the Franchisee unless opposed by the City. The City will work with Franchisee in developing the process for these notification requirements.
 - 2. Such requirements or policies as may be adopted by the City to implement these provisions shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and to minimize the total number of excavations and cost of total communications infrastructure installation.

900.325 Use of Facilities by others; required terms.

A Franchisee shall make its poles or conduits physically available for use by other parties on terms that are fair and reasonable.

900.330 Removal and Relocation of Facilities.

Facilities shall be removed or relocated on request of the City at Franchisees' cost as may be more specifically provided in the ROW Ordinance.

900.335 Franchisee Responsible for Costs.

To the extent not inconsistent with the Federal Cable Act, the Franchisee shall be responsible for all reasonable costs borne by the City that are directly associated with Franchisee's installation, maintenance, repair, operation, use and replacement of its Facilities within the Rights-of-Way that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Ordinance. Such costs shall not include costs to the City of locating and marking of City underground lines or facilities ("Locates"), for the initial construction of Franchisees Cable System, provided that City will bill and Franchisee will pay the cost for repeat Locates when required. Such costs shall not include costs related to the administration of the Franchise nor inspection, compliance or enforcement actions on the part of the City. All costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Franchisee. Franchisee shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

ARTICLE IV. MISCELLANEOUS

900.400 Administration of Code and Franchises.

The City shall be responsible for the continued administration of this Code and any Franchises granted hereunder. The City may delegate this authority from time to time in any manner consistent with applicable law, provided, however, that the City shall not delegate enforcement authority.

900.405 Non-Enforcement by the City.

To the extent not inconsistent with this Code, a Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Code or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

900.410 Publication of Notices.

All public notices or ordinances required to be published by law shall be published in an official newspaper of the City. A Franchisee shall be responsible for all costs of publication that may be required with respect to its Franchise or any amendments thereto.

900.415 Severability.

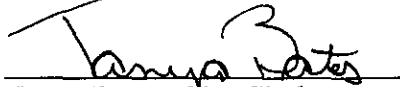
If any material Section of this Code or of any Franchise granted subject to it is held by a governmental authority of competent jurisdiction to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct and independent part of the Code and/or Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions therein.

SECTION 2. This Ordinance shall take full force and effect from and after its approval by the Mayor of the City of Platte City, Missouri, and shall thereafter be incorporated into the City Code by the City Clerk.

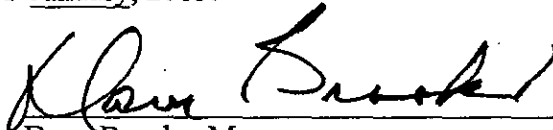
PASSED by the Board of Aldermen this 14th day of January 2003.


Dave Brooks, Mayor

ATTEST:


Tanya Bates, City Clerk

APPROVED THIS 16th DAY OF January, 2003.


Dave Brooks, Mayor

