

**AN ORDINANCE REPEALING ORDINANCE 1686 AND THEREFORE SUBSTITUTING AN ORDINANCE ESTABLISHING REGULATIONS FOR THE USE OF THE RIGHTS-OF-WAY TO CONSTRUCT, OPERATE, AND/OR MAINTAIN COMMUNICATIONS SYSTEMS AND CABLE SYSTEMS, ESTABLISHING THE REQUIRED TERMS FOR COMMUNICATION SYSTEM RIGHTS-OF-WAY USE AGREEMENTS AND CABLE FRANCHISES, AND ESTABLISHING COMPENSATION FOR SUCH USE OF THE RIGHTS-OF-WAY**

**WHEREAS**, Missouri law authorizes the City of Chesterfield (hereinafter the “City”) to regulate the use and occupancy of Rights-of-Way for placement of a Communications Systems and Cable Systems as hereinafter defined, and to require compensation and to adopt rules and regulations regarding such use and occupancy; and

**WHEREAS**, the City is authorized to and should establish standards for occupancy of the Rights-of-Way by Communications Facilities and Cable Facilities and other uses that are consistent with and recognize the Public Service Commission's duties and jurisdiction; and

**WHEREAS**, the City's standards included in this ordinance are designed to:

- A. Adequately compensate the City for occupancy of the Rights-of-Way by Facilities;
- B. Fully protect the public and the City from any harm caused by private commercial use of Rights-of-Way, including, but not limited to, reducing the risk of loss of service, or personal or property injury, from errant excavation;
- C. Protect the regulatory authority of the City in a manner consistent with federal and state law;
- D. Otherwise protect the public interests in and promote the development and coordinated use of an advanced telecommunications infrastructure;
- E. Promote the entry of communications providers on a competitively neutral manner, maximize the available space for such providers by requiring coordination, collocation, and planned construction of infrastructure in the Rights-of-Way, and

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI AS FOLLOWS:**

Section 1: The Cable and Communications Code attached hereto and incorporated herein by this reference, is hereby enacted as the “Cable and Communications Code” for the City, and all ordinances and laws of the City contrary and inconsistent therewith are hereby repealed to the extent of such inconsistency.

Section 2: The City's Ordinance No. 1686 is hereby repealed and replaced with the provisions pertaining attached hereto.

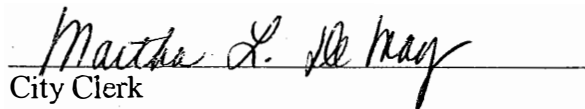
Section 3: The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council would have enacted the valid portions without the invalid one, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent. All provisions repealed herein shall be deemed revived in the event that the provisions replacing such repealed sections are invalidated for any reason.

Section 4: This Ordinance shall be in full force and effect both from and after its passage and approval.

PASSED AND APPROVED this 19<sup>TH</sup> day of MARCH, 2001.

  
Mayor

ATTEST:

  
City Clerk

**ST. LOUIS COUNTY MUNICIPAL LEAGUE  
MODEL COMMUNICATIONS AND CABLE CODE**

|                   |   |           |
|-------------------|---|-----------|
| <b>CHAPTER 1.</b> | <b>GENERAL PROVISIONS</b> .....   | <b>1</b>  |
| 1.1               | Declaration of Findings .....   | 1         |
| 1.2               | Title .....   | 1         |
| 1.3               | Applicability.....  | 1         |
| 1.4               | Preservation of Police Power Authority.....   | 1         |
| 1.5               | Public Inspection Of Records .....  | 1         |
| 1.6               | Indemnification.....  | 1         |
| 1.7               | Compliance With Laws .....  | 2         |
| 1.8               | Enforcement; Attorneys' Fees.....   | 2         |
| 1.9               | Relationship of the Parties.....  | 2         |
| 1.10              | Defined Terms.....  | 2         |
| <b>CHAPTER 2.</b> | <b>COMMUNICATIONS SERVICES</b> .....  | <b>9</b>  |
| 2.1               | Unlawful to Operate Without an Agreement.....   | 9         |
| 2.2               | Agreements Nonexclusive.....  | 9         |
| 2.3               | Nature of Rights Granted by any Agreement .....   | 9         |
| 2.4               | Application and Application Fee Required .....  | 9         |
| 2.5               | Standard for Approval or Renewal of Agreements.....   | 9         |
| 2.6               | Cable Service and Open Video Systems (OVS); Separate Franchise or Agreement Required .....                              | 10        |
| 2.7               | Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate .....   | 10        |
| 2.8               | Term .....  | 10        |
| 2.9               | Use Fees .....  | 10        |
| 2.10              | Bundled Services .....  | 10        |
| 2.11              | Timing of Payment of Use Fees.....  | 11        |
| 2.12              | Interest on Late Payments and Under Payments.....   | 11        |
| 2.13              | Fee Statement .....   | 11        |
| 2.14              | No Accord and Satisfaction .....  | 11        |
| 2.15              | Maintain Records .....  | 11        |
| 2.16              | Right of Inspection .....   | 11        |
| 2.17              | Description of Service .....  | 12        |
| 2.18              | Payment of Taxes; Use Fee Not a Tax .....   | 12        |
| 2.19              | Duty to Notify City of Resellers.....   | 12        |
| 2.20              | Duty of Reseller to Provide Notice of Operation Within City; Facilities to be<br>Subject to Franchise or Agreement..... | 12        |
| 2.21              | Sale or Lease of Facilities.....  | 12        |
| 2.22              | Assignment of Agreement .....   | 12        |
| 2.23              | Forfeiture of Agreement and Privilege .....   | 13        |
| <b>CHAPTER 3.</b> | <b>CABLE SERVICES</b> .....   | <b>13</b> |
| 3.1               | Cable Franchise Requirements. ....  | 13        |
| 3.2               | Design, Services and Capabilities.....  | 16        |
| 3.3               | Institutional Network, And Public Educational And Governmental Access Or<br>"PEG Access" .....                          | 18        |
| 3.4               | Technical Standards and Customer Service Practices. ....  | 18        |
| 3.5               | Operation and Maintenance.....  | 26        |
| 3.6               | Financial Provisions, Remedies, Procedures and Due Process.....   | 28        |
| 3.7               | Foreclosure, Receivership and Abandonment. ....   | 31        |
| 3.8               | Purchase Of System.....   | 31        |
| 3.9               | Sale Or Transfer Of Franchise.....  | 32        |
| 3.10              | Rights Of Individuals Protected. ....   | 32        |

|  |  |           |
|--|--|-----------|
| 3.11   | Miscellaneous Provisions .....                                     | 33        |
| <b>CHAPTER 4. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS .....</b> |  | <b>33</b> |
| 4.1  | Rights-of-Way Ordinance.....                                       | 33        |
| 4.2  | Permit Requirements .....  | 33        |
| 4.3  | Mapping of Facilities.....   | 34        |
| 4.4  | No Interference .....  | 34        |
| 4.5  | Advertising, Signs or Extraneous Markings .....                    | 34        |
| 4.6  | Tree Protection .....  | 34        |
| 4.7  | Exclusion of Certain Locations/Facilities.....                     | 34        |
| 4.8  | Location, Type and Design of Facilities Subject to Approval.....   | 34        |
| 4.9  | Notification, Joint Installation and Collocation Requirements..... | 35        |
| 4.10   | Use of Facilities by others; required terms .....                  | 35        |
| 4.11   | Additional Facilities Requirements; Planned Infrastructure .....   | 35        |
| 4.12   | Removal of Facilities.....   | 36        |
| 4.13   | Relocation of Facilities.....                                      | 36        |
| 4.14   | No Cause of Action Against the City .....                          | 36        |
| 4.15   | Provider Responsible for Costs .....                               | 36        |
| 4.16   | Insurance and Bonds.....   | 37        |
| <b>CHAPTER 5. MISCELLANEOUS.....</b>   |  | <b>37</b> |
| 5.1  | Administration of Franchise .....                                  | 37        |
| 5.2  | Appeals.....   | 37        |
| 5.3  | Non-Enforcement by the City.....                                   | 37        |
| 5.4  | Penalties.....   | 37        |
| 5.5  | Publication of Notices .....                                       | 37        |
| 5.6  | Severability.....  | 37        |

## CHAPTER 1. GENERAL PROVISIONS

- 1.1 **Declaration of Findings.** The City hereby declares as a legislative finding that the Rights-of-Way within Chesterfield:
- A. Are a unique and physically limited resource;
  - B. Are critical to the travel and transport of persons and property in the City; and
  - C. Are intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by the Facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the City and its citizens; and require adoption of the specific additional regulations established by this Code to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of cable, communications, and other services in the public interest.
- 1.2 **Title.** This Ordinance may be referred to and cited as the "Communications and Cable Services Code" or herein as the "Code" of the City of Chesterfield.
- 1.3 **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 subsection 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 Franchise or Agreement granted. Nothing in this Code shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof, and shall impose obligations on any such Person additional to those included in such franchise or contract only to the extent permitted by law; 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 franchise. The provisions of this Code shall apply irrespective of whether a Provider is determined to be operating pursuant to a valid franchise or Agreement.
- 1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Code and pursuant to any Franchise or Agreement authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its [**Home Rule or statutory**] powers, to the extent not in conflict with Missouri or federal law. Nothing in this Code shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.
- 1.5 **Public Inspection Of Records.** Certain information required to be filed with the City pursuant to this Code is subject to inspection and copying by the public pursuant to the provisions of the Missouri Open Records Act, R.S.Mo. §610.010 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed in the public interest and as may be established by City Policy establishing requirements for notification and/or joint installation of facilities.
- 1.6 **Indemnification.** As a condition of use of the Rights-of-Way, Provider at its sole cost and expense, shall indemnify, protect, defend (with counsel 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 an Agreement or Franchise with Provider, the rights granted to Provider, or the activities performed, or failed to be performed, by Provider under the Agreement or use of the Rights-of-Way, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. This indemnification shall survive the expiration or termination of any Agreement or use of the Rights-of-Way for a period of five (5) years after the effective date of expiration or termination.

- 1.7 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Agreement or Franchise, the Provider 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.
- 1.8 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Code and any Agreement or Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Code or any Agreement or Franchise.
- 1.9 **Relationship of the Parties.** Under no circumstances shall any Agreement or Franchise authorized by this Code be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.
- 1.10 **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 Public, Educational or Governmental Access use; and
2. The facilities and equipment for the use of such channel capacity.

B. **"Affiliate"** means each person, directly or indirectly, controlling, controlled by, or under common control with the Licensee; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such Licensee, or any creditor of such Licensee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Licensee.

C. **"Agreement"** means a Communications Rights-of-Way Use Agreement authorized herein and executed by the City and Licensee.

D. **"Antenna"** means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

E. **"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).

- F. "**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.
- G. "**Cable Services**" 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;
- H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of an Agreement, 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 or revenues that are required by law to be treated under the same regulation as such direct access service. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Code, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Agreement with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Agreements or Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Use Agreement. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Agreement, irrespective of any additional rates or terms required for any future use under any new Communications Agreement.
- I. "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the 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.

- J. "**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.
- K. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying one industry standard video signal, in either analog or digital form. At the time of the passage of this Ordinance, analog standard channel is defined as 6 MHz.
- L. "**City**" or "**Grantor**" means the City of Chesterfield, Missouri.
- M. "**City Engineer**" means the City Engineer, Director of Public Works, or other designated City official.
- N. "**Code**" means this "Communications and Cable Services Code" and all provisions therein established by this Ordinance.
- O. "**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).
- P. "**Communications**" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.
- Q. "**Communications Service**" means the transmission via Facilities, in whole or in part, of any writings, 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" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "Cable Service," but these services shall be subject to separate cable franchising requirements and application.
- R. "**Complaint**" means any oral, written or electronic inquiry, allegation, or assertion made by a Person regarding Cable Service or Cable System operations.
- S. "**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. Converters include all devices furnished to the Subscriber and owned by the Cable Provider.
- T. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider 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.
- U. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.



- V. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.
- W. "**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 Rights-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.
- X. "**Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status and activities as such, pursuant to Chapter 3 of this Code. 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 Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Service providers or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee 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; (iv) any permit fee or other fee imposed under any valid right-of-way ordinance; or (v) any fee imposed under Title 17 of the United States Code.
- Y. "**Governing Body**" means the legislative body of the City.
- Z. "**Grantee**" means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees.
- AA. "**Gross Receipts**" means all revenues received directly or indirectly by a Licensee or its Affiliates for Communications Services originating, terminating or otherwise rendered within the corporate limits of the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Licensee derived from the following:
1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;
  2. Recurring local exchange service revenues for public, semi-public and private coin;
  3. Local directory assistance (411);
  4. Line status verification/busy interrupt;
  5. Local operator assistance;
  6. Information delivery service;
  7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Rights-of-Way;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;
9. Revenue received by the Licensee from Reseller Service Providers (except for revenues from Reseller Service Providers that have a separate enforceable Agreement with the City providing for payment of Gross Receipts of that Reseller Service Provider);
10. Internet access charges or services and including all high-speed and traditional subscriber line charges or services (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Agreement between Licensee and the City);
11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose;
12. Late charges or interest received on gross receipts;
13. Any portion of the Use Fees collected by Licensee from any person;
14. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectable debt, any federal, state or local taxes separately stated on a customer's bill. "Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Agreement with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Licensee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Licensee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Licensee, unless demonstrated in writing to the contrary as to each such revenue.

BB. **"Gross Revenues"** means any revenue actually received by a Grantee, or by any other entity that is a Cable Operator on a Grantee's Cable System including the 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, leased channel access fees; Converter rentals; Franchise Fees collected from Subscribers; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Agreement with the City as prescribed in this Code); 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 this Code or a Franchise to pay the applicable Cable Franchise Fees. Revenues which are not directly attributable to specific Cable 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 Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. 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 Cable 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; or (iii) any taxes on Cable 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.

- CC. "**Institutional Network**" or "**I-Net**" means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. The I-Net shall 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.
- DD. "**Institutional Network Services**" means the provision of an I-Net by a Cable System operator to governmental, educational and other non-profit, publicly funded users, as determined by the City, 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.
- EE. "**Licensee**" means the party subject to a Communications Rights-of-Way Agreement, or its successor, assigns, or transferee.
- FF. "**Linear Foot**" means the length in feet of cable, wire, fiber, conduit or other linear Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Facilities used by Provider and subject to this code.
- GG. "**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.
- HH. "**Normal Operating Conditions**" means those Cable Services or conditions that are within the control of a Cable System Franchise Grantee. Those conditions which are ordinarily within the control of Grantee 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 Grantee 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.

- II. "**Open Video Services**" means any video programming Services provided to any person by a Licensee 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.
- JJ. "**Person**" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.
- KK. "**Provider**" means a Licensee or Grantee or any Person required to have a Communications Service Agreement or Cable Service Franchise.
- LL. "**Public Building**" means any building owned or for the greater part occupied by the City or other governmental unit.
- MM. "**Renewal**" means a new Communications Service Agreement or Cable Service Franchise granted to an existing Provider.
- NN. "**Reports**" means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Licensee 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 Provider identifies specific information as such.
- OO. "**Reseller Service Provider**" means a Person providing Communications or Cable Service within the City that does not have ownership, possessory interest, or control of identifiable Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Communications Service Provider utilizing the Rights-of-Way, and/or by using excess capacity or bandwidth from a facility-based Communications Service Provider.
- PP. "**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 other 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, City Hall property or public works facilities.
- QQ. "**ROW Ordinance**" means any Ordinance of the City that regulates, without limitation, the excavation, construction and use of the Rights-of-Way by all persons.
- RR. "**Service Interruption**" means the loss of picture or sound on one or more Channels on the Cable System.
- SS. "**Standard Installation**" means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.
- TT. "**Subscriber**" means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee 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 Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Code or Franchise.
- UU. "**System**" means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

- VV. "**Telecommunications Act**" means the Telecommunications Act of 1996 codified at Title 47 of the United States Code.
- WW. "**Trained Representative**" means employees of a Grantee 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.
- XX. "**Use Fee**" means the fee imposed by the City on Licensee for use of the Rights-of-Way for Communications Services pursuant to Chapter Two of this Code.

## CHAPTER 2. COMMUNICATIONS SERVICES

- 2.1 **Unlawful to Operate Without an Agreement.** It shall be unlawful for any Person to construct, operate, own or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City without a valid, unexpired Rights-of-Way Use Agreement from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain an Agreement.
- 2.2 **Agreements Nonexclusive.** The authority granted by the City in any Agreement shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Agreements or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.
- 2.3 **Nature of Rights Granted by any Agreement.** Agreements shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Code and as may be further limited by the Agreement. No Agreement 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 it excuse Licensee from obtaining appropriate access or pole attachment agreements before locating on the Facilities controlled or owned by the City or a third party. All Agreements shall be deemed to incorporate and be limited by the provisions of this Code and shall create rights solely applicable to Licensee.
- 2.4 **Application and Application Fee Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Agreement, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in an amount as may be established by the City, to compensate the City and defray in whole or part the City's costs in review, negotiation and administration of any application filed under this Code. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Licensee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Agreement for use by Licensee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Use Fees for use of the Rights-of-Way by other governmental entities where such waiver is deemed by the City to be lawful and in the public interest. The information provided by Licensee shall be certified as true and correct and Licensee shall be responsible to certify to the City any material changes to the information provided in such completed Application during the term of any Agreement.
- 2.5 **Standard for Approval or Renewal of Agreements.** The City shall authorize Agreements or renewals to any eligible Licensee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Code, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Agreement. All Licensees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate

governmental entity, including, but not limited to, the City, the FCC or the Missouri Public Service Commission. In reviewing an Application, the City may consider prior conduct of the Licensee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. The City may deny or condition any Agreement where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Agreements setting forth the minimum requirements for all Licensees. Applications for Agreements may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Code.

- 2.6 **Cable Service and Open Video Systems (OVS); Separate Franchise or Agreement Required.** An Agreement for Communications Service shall not provide Licensee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Licensee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Licensee. A Communications Services Agreement shall also not permit Licensee to operate an Open Video System, except where otherwise expressly provided in the Agreement or by separate Agreement, and Licensee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Licensee otherwise complies with FCC regulations promulgated pursuant to 47 U.S.C. § 573. Absent such applicable Agreement from the City, Licensee shall be prohibited from offering OVS service and any such service shall be considered a breach of the Agreement. Unless otherwise specified, any such new Agreement or amendment to an Agreement shall obligate Licensee to pay a Use Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Licensee to exchange all or a part of the Use Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Licensee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable use fees.
- 2.7 **Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate.** The Licensee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of an Agreement or hereinafter adopted to the extent not in contravention of state or federal law. The grant of an Agreement does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Licensee. The use of the Rights-of-Way authorized by any Agreement shall in all matters be subordinate to the City's use and rights therein.
- 2.8 **Term.** An Agreement shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a shorter term is warranted under the circumstances.
- 2.9 **Use Fees.** Licensee shall pay to the City as monthly compensation for the use of the Rights-of-Way pursuant to an executed Agreement a Use Fee equal to five percent (5%) of monthly Gross Receipts, but in no event shall the monthly Use Fee be less than the sum of:
- A. \$10,000 for the first mile of linear Facilities, or part thereof, plus \$1.70 per Linear Foot thereafter up to a monthly charge under this subsection of \$6,250, and
  - B. \$150 for each Antenna in the Rights-of-Way, but not less than \$3000.
- 2.10 **Bundled Services.** To the extent Licensee markets "bundled" services, including combinations of services that may be subject to an Agreement and also a Cable Services Franchise, Licensee shall fairly reflect to the City an appropriate and reasonable division of services among the various

services offered based on the actual value of each separate service. Whether or not Licensee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Services Use Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Franchise Fee. Should Licensee engage in billing practices that, in the determination of the City, do not fairly reflect an appropriate split of Communications Services and Cable Services the City will notify Licensee in writing of its determination. The parties will meet and discuss in good faith whether the billing practices result in an unfair payment of fees to the City. If the parties do not agree on an appropriate method of determining which charges are subject to Communications Services Use Fees and which are subject to the Franchise Fee, the parties may subject the dispute to arbitration, or may resort to other methods of dispute resolution, including litigation. Fees or taxes which are not paid on the appropriate division of bundled services receipts, when ultimately paid, will be subject to all interest and penalties provided by the applicable Agreements. If Licensee holds a Cable Service Franchise, any fee that could be lawfully attributed to Gross Receipts or alternatively "Gross Revenues" under this Code shall be deemed to be subject to the higher fee.

- 2.11 **Timing of Payment of Use Fees.** Unless otherwise agreed to in writing, all Use Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").
- 2.12 **Interest on Late Payments and Under Payments.** If any Use Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent per month, unless such other maximum rate is established by Law.
- 2.13 **Fee Statement.** Each Use Fee payment shall be accompanied by a statement showing the manner in which the Use Fee was calculated and in such format as may be required by the City. If any Fee Statement is determined to understate the Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Within 90 calendar days following the end of the calendar year, each Licensee shall submit a statement, certified as true, setting forth its Gross Revenues, the amount of linear foot and antennae within the Facilities, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the Use Fee.
- 2.14 **No Accord and Satisfaction.** No acceptance by the City of any Use Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Use Fee payment be construed as a release of any claim of the City.
- 2.15 **Maintain Records.** Licensee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Licensee with respect to the System in a manner that allows the City to determine whether the Licensee has properly calculated its Use Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Licensee shall correct the manner in which the books and/or records are maintained so that the Licensee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Missouri, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The failure to provide information or maintain records as required herein shall be grounds for forfeiture or revocation of an Agreement.
- 2.16 **Right of Inspection.** The City, or a third party designated by the City for the purposes of determining compliance with this Section, shall have the right to inspect, examine, and copy records at a location acceptable to the City during normal business hours and the right to audit and to recompute any amounts determined to be payable under this Code, whether the records are held by the Licensee or any other person that collects or receives funds related to the Use Fee obligations or the provision of Communications Services over a Licensee's Communications System in the City. Licensee shall also provide reasonable access to records necessary to verify

compliance with the terms of the Agreement. The Franchisee or Licensee shall pay the City's audit expenses, costs, or travel charges, including an advance payment of such costs estimated by the City, provided that the frequency of such audits shall not exceed one per year. In addition to the annual audit, a Franchisee or Licensee shall make such records available for review upon reasonable notice by the City, provided that the City agrees to bear its own costs for any such additional review of records. In addition to other relevant information, the City reserves the right to request information showing circuit account ID, billing account ID, city of origination, city of termination within Greater St. Louis area, monthly recurring revenue, non-recurring revenue, turn-up dates, Common Language Location Identifier (CLLI) codes for all Greater St. Louis customers, names of CLEC's, resellers or IXC's leasing bandwidth, facilities mileage figures necessary to substantiate Licensee license fee calculations.

- 2.17 **Description of Service.** Franchisee shall on an annual basis provide the City with a description of new local communications services offered within the City during the prior six-month period. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this paragraph.
- 2.18 **Payment of Taxes; Use Fee Not a Tax.** The Use Fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except that Licensee, unless hereinafter provided by the City, shall receive a credit in payment of Use Fees in the amount of any Utilities Tax due and paid pursuant to City Code. The Use Fee is compensation for use of the Rights-of-Way and shall in no way be deemed a tax of any kind. Licensee shall be fully responsible for the payment of all applicable taxes.
- 2.19 **Duty to Notify City of Resellers.** Within 30 days of the Licensee carrying any Communications of any Reseller Service Provider through Licensee's Facilities, Licensee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Licensee relating to such Reseller, and provide to City any written commitment, if any, as to the payment of Use Fees for the revenues attributable to such Reseller Service Provider.
- 2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to be Subject to Franchise or Agreement.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise or Agreement authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise or Agreement with the City authorizing the use of such Facilities.
- 2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Agreement, Licensee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. Licensee shall provide the City at least 30 days' prior notice of such intended sale, lease or transfer of possession or control.
- 2.22 **Assignment of Agreement.** The Licensee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, an Agreement or any of the rights or privileges granted by an Agreement, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership.



Licensee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

- 2.23 **Forfeiture of Agreement and Privilege.** In case of failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Code or an Agreement, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Code or the terms of an Agreement, the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted by this Code and any Agreement, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of an Agreement, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other reasonable period established by the Governing Body, in which to cure the default by complying with the conditions of an Agreement and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with, and that the Company did not reasonably and in the public interest require more than thirty (30) days to cure the default, the City shall take action by an affirmative vote of the Governing Body present at the meeting and voting, to terminate the Agreement; setting out the grounds upon which said Agreement is to be forfeited or revoked. Nothing herein shall prevent the City from invoking any other remedy or from declaring immediate forfeiture where the default is incapable of being cured by Licensee, including where such defaults or violations have repeatedly occurred.

## CHAPTER 3. CABLE SERVICES

### 3.1 Cable Franchise Requirements.

- A. **General Findings Regarding Cable Services.** The City finds that Cable Service has become an integral part of its citizens' lives, and that evolving Cable Systems have the potential to play an even more dramatic role in the future, providing great benefits and advanced capabilities to Residents of the City. At the same time, the rapidly emerging role of Cable Systems as an integrated broadband communications platform necessitates a finding that the local government has a legitimate and vital role to play in regulating Cable Services in a manner that ensures high quality customer service while at the same time fostering competition to the extent permitted under law. The Governing Body further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers that are vested in the City.
- B. **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 in the City without a Franchise, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 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 Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.
- C. **Franchise Not Exclusive.**
1. Any Franchise granted pursuant to this Ordinance 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 pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more

beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration the context 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. Nothing in this subsection shall be deemed to create any cause of action or claim of breach for any Franchisee or third party.

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.

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

1. This Chapter and 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 permitted by law and the reasonable exercise of the City's police powers.
3. The provisions of this Chapter and Code shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Code shall also apply to all existing Franchises, to the extent not inconsistent with the terms of any such Franchise or applicable law, and to the extent that it does not impose additional material burdens on such Grantee. A Cable Franchise (including all of Grantee'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 Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Franchise and the provisions of this Chapter or 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 Chapter or Code, the parties shall modify the existing 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 as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator or other designated administrative official, shall prepare a report and make his or her recommendations respecting such application to the Governing Body.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Governing Body. Within thirty (30) days after the close of the hearing, the Governing Body shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. **Franchise Renewal.** Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, 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.** Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional 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 Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms which when taken as a whole do not give a competitive advantage to one Grantee 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 Grantee 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 existing Cable Service and the potential that the proposed Franchise would adversely affect the residents of the City.

9. The likelihood and ability of the applicant to continue to provide competing Cable Service to Subscribers within the entire Franchise Area for the duration of the Franchise.
10. 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.**

1. The City may issue a license to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's 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 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. Such license shall be granted pursuant to the requirements of Chapter 2 of this Code.

3.2 **Design, Services and Capabilities.**

- A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in St. Louis County. The Franchise shall incorporate a description of the Grantee'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 this Ordinance unless otherwise specified in the Franchise.
- C. **Drops To Public Buildings.**
  1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, 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 shall also receive one (1) Cable Drop and one (1) outlet and 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 Grantee shall complete construction of the Drop and outlet within ninety (90) 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 Grantee at the cost of Grantee's time and material. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Grantee'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 Grantee'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 Grantee 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 Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length.
- D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall provide upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area.
- E. **Use Of Grantee's Facilities.** Subject to any applicable state or federal regulations, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use by Grantee; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee'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 Grantor fire, police, traffic, utility, and/or signal systems, but not for Cable System purposes in competition with the Grantee. The Grantee shall not deduct the value of such use of its Facilities from its Franchise Fee and/or other fees payable to Grantor.
- F. **Upgrade of System.** Every Grantee 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 Grantee shall at all times provide the system capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that at a minimum these capabilities will remain in place even if the FCC at some future dates eliminates the current regulations.
- H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed upon modifications to the 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 Grantee 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 Grantee shall provide standby power generating capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Grantee 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 Grantee 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. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

### 3.3 **Institutional Network, And Public Educational And Governmental Access Or "PEG Access"**

#### A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on an equal basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Code an Institutional Network, that provides two-way broadband voice, video and data capabilities for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such Institutional Network requirements shall at a minimum satisfy the community need for such facilities as determined by the Governing Body for the period of the applicable Franchise.
2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access Channels, as specified in their Franchise. 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, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

- B. **Proof of Performance Testing.** To ensure high quality service on the Institutional Network and Access Channels, proof of performance testing throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and to ensure that the level of technical quality on such Access Channels is the same as on other Channels within the Cable System. In the event that a Complaint is made by a programmer of any Access Channels, the Grantee shall immediately investigate the Complaint and determine whether the Grantee is in compliance with the technical standards set forth in section 3.4.2 of this Chapter.

### 3.4 **Technical Standards and Customer Service Practices.**

#### A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.
2. Every Grantee 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 Grantee shall at all times assist and cooperate with Grantor 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 Grantee 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 Grantee 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 Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee 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 Grantee shall have Trained Company 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 Grantee 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 Grantee 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. **Cable Channels for Commercial Use, Local Commercial Television Signals, and Noncommercial Educational Television.** A Franchisee shall designate channel capacity for commercial and non-commercial use by persons unaffiliated with the Franchisee as required by federal law, consistent with the principle of fairness and equal accessibility to all persons and the city to the extent they have a legitimate use for such capacity.

E. **Technical Standards.**

1. Any Cable System within the City shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 et seq. and any other applicable federal technical standards, including any such reasonable standards as hereafter may be amended or adopted by the Governing Body in a manner consistent with federal law.
2. A Franchisee shall use equipment generally used in high-quality, reliable, modern Systems of similar design, including, but not limited to, back-up power supplies at the fiber nodes and head-ends capable of providing power to the system for a minimum of two (2) hours in the event of an electrical outage, plus adequate portable generators to cover longer outages. The obligation to provide backup power supplies requires the Franchisee to install equipment that will (A) cut in automatically on failure of commercial utility AC power, (B) revert automatically to commercial power when it is restored, and (C) prevent the standby power source from powering a "dead" utility line. In addition, the design and construction of a system shall include modulators, antennae, amplifiers, and other electronics that permit and are capable of passing through the signal received at the headend with minimal alteration or deterioration.

F. **Interconnection.**

1. A Franchisee shall design its System so that it may be interconnected with any or all other Systems or similar Communications Systems in the area.

Interconnection of Systems may be made by direct cable connection, microwave link, satellite or other appropriate methods.

2. Upon receiving the directive of the Governing Body to interconnect, the Franchisee shall immediately initiate negotiations with the other affected System or Systems so that costs may be shared proportionately for both construction and operation of the interconnection link.
3. The Governing Body may in writing grant reasonable extensions of time to interconnect or rescind its request to interconnect upon its own initiative or upon petition by the Franchisee to the Governing Body. The Governing Body shall rescind the request if it finds that the Franchisee has negotiated in good faith and the cost of interconnection would cause unreasonable increase in Subscriber rates.
4. No interconnection shall take place without prior written approval of the Governing Body. A Franchisee seeking approval for interconnection shall demonstrate that all signals to be interconnected will comply with FCC technical standards for all classes of signals and will result in no more than a low level of distortion.
5. The Franchisee shall cooperate with any interconnection corporation, regional interconnection authority or state or federal regulatory agency which may be established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of the City.

G. **Integration of Advancements in Technology.** A Franchise agreement may require a Franchisee to periodically upgrade its Cable System to integrate advancements in technology as may be necessary to meet the needs and interests of the community in light of the costs thereof, and/or to submit periodic reports on cable technology and competition to the City Clerk.

H. **System Design Review Process.** In addition to any requirements included in a Franchise Agreement, at least sixty (60) days prior to the date construction of any rebuild is scheduled to commence, the franchisee shall provide the City Clerk with notice that a detailed system design and construction plan is available for review by the City at a specific office of the Franchisee located in the metropolitan St. Louis area, which shall include at least the following elements:

1. Design type, trunk and feeder design, and number and location of hubs or nodes.
2. Distribution system-cable, fiber and equipment to be used.
3. Plans for standby power.
4. Longest amplifier cascade in system (number of amplifiers, number of miles, type of cable/fiber).
5. Design maps and tree trunk maps for the System. The System design will be shown on maps of industry standard scale using standard symbols, and shall depict all electronic and physical features of the cable plant. The City may review the plan and, within thirty (30) days of the date the plan is made available for City review, submit comments to the Franchisee. Within fifteen (15) days of receipt of the comments, the Franchisee shall notify the City Clerk that a revised plan is available for review by the City at a specific office located in the metropolitan St. Louis area, either incorporating the comments or explaining why the comments were not included.



The City's review does not excuse any nonperformance under a Franchise agreement, this Ordinance or other applicable law.

- I. **Emergency Alert System.** A Franchise shall comply with 47 U.S.C. § 544(g) and all regulations issued pursuant thereto.
- J. **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 seven (7) 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 Grantee 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 Grantee 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 Grantee'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.
- K. **Repairs and Interruptions.**
  1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee 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 Grantee 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, or Cable Internet Service connectivity.
  3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem and shall exercise all due diligence to complete the work in the shortest period of time possible.
  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 twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.
  5. A Grantee 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 Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. A Grantee 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 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber 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 Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:
  - (i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or
  - (ii) A problem established as having been non-Cable System or Cable Service in origin.

A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.
9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee'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 Grantee'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 Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

**L. 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 Grantee 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 Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.
2. No Subscriber may be disconnected without prior written notice.
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 Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.
6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.
7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.
8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee 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 Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee 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 Grantee may not impose any charge for service delivered after the requested date of disconnection. 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 Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

**M. Communications Between Grantee and Subscribers.**

**1. Notifications to Subscribers:**

- (i) Every Grantee 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:
  - (a) Product and Services offered;
  - (b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.
  - (c) Installation and service maintenance policies;
  - (d) Instructions on how to use Services;
  - (e) Channel positions of programming offered on a System; and
  - (f) Billing and Complaint procedures, including the name, address and telephone number of the City.
- (ii) 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 Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee 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 Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

- (i) 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.
- (ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
- (iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within twenty-one (21) calendar days.
- (iv) 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 Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

- (i) 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:
  - (a) The date after which the fee will be imposed if the balance is not paid; and
  - (b) The amount of the fee that will be imposed; and
- (ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars (\$5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

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

N. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of all Complaints made to them and the resolution of such Complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. A Grantee shall make available to Grantor a written summary of such Complaints and their resolution upon request.

O. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device 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, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

P. **Service Area.**

- 1. **Area served.** A Franchisee shall build and maintain its system so that within a reasonable period of time, as established by the Franchise, it is able to provide service to all households desiring service located within the Franchise Area

without any construction charges (other than standard connection charges and drop charges as indicated in section 2(v)). A Franchisee must build and maintain its system so that it can extend service to households desiring service located outside the Franchise area in accordance with section 2(i) through (vi). Connections to commercial customers shall be governed by section 2(vii).

2. **Line Extension Requirements.**

- (i) For areas within the City limits but outside the Franchise Area, including areas annexed after the effective date of its Franchise, a Franchisee shall upon request of the Governing Body extend its trunk and distribution System to serve households desiring service without any construction charge (other than standard connection charges and drop charges as indicated in section 5(e)(2)), unless the Franchisee demonstrates to the Governing Body's satisfaction evidenced by written decision that circumstances justify a specific charge, where: the new subscriber requesting service is located within five hundred (500) feet from the termination of the Cable System, or the number of potential Subscribers to be passed by such extension is equal to or greater than twenty (20) potential households per cable mile measured from any point on the System.
- (ii) In circumstances where that the factors requiring line extension do not exist as set forth in the foregoing paragraph. (A) are not met, the Franchisee shall on the request of the Governing Body extend its Cable System based upon the following cost-sharing formula. The Franchisee shall contribute an amount equal to the construction costs per mile multiplied by the length of the extension in miles, multiplied by a fraction where the numerator equals the number of potential households per mile at the time of the request and the denominator equals 20. Households requesting service as of the completion of construction can be required to bear the remainder of the total construction costs on a pro rata basis.
- (iii) The "construction costs" are defined as the actual turnkey cost to construct the entire extension including lines, materials, electronics, pole make-ready charges, and labor, but not the cost of drops except as provided below. If the Franchisee proposes to require a household requesting extension to make a contribution in aid of extension, it must (1) notify the Governing Body in advance; (2) send the Governing Body a copy of the invoice showing the amount actually charged each household requesting extension; and (3) within thirty (30) days of completion of the extension, furnish proof of the total cost of the extension and make any appropriate refunds if the total cost is less than the amounts charged in advance of construction. At the end of each calendar year, the Franchisee must calculate the amount any contributing person would have paid based on the number of Persons served at that time and pay back the difference between the amount which would then be owed. The Franchisee shall report such calculations and refunds to the City Clerk by the end of January of the following year.
- (iv) Installation of drops. Except as federal rate regulations may otherwise require, the Franchisee shall not assess any additional cost for service drops of one hundred fifty (150) feet or less unless the Franchisee demonstrates to the Governing Body's satisfaction, evidenced by written decision, that circumstances justify a specific charge. Where a drop exceeds one hundred fifty (150) feet in length, a Franchisee may

charge the subscriber for the difference between Franchisee's actual costs associated with installing a one hundred fifty-foot drop, and the Franchisee's actual cost of installing the longer drop, provided that drop length shall be the shorter of (1) the actual length of installed drop or (2) the shortest practicable distance to the point where the Franchisee would be required to extend its distribution system.

- (v) Location of drops. Except as federal rate regulations may otherwise require, in any area where a Franchisee would be entitled to install a drop above ground, the Franchisee will provide the subscriber the option to have the drop installed underground, but may charge the subscriber the difference between the actual costs of the above-ground installation and the actual cost of the underground installation.
- (vi) Time for extension. A Franchisee must extend service to any person who requests it (1) within seven (7) days of the request within the Franchise Area or where service can be provided by activating or installing a drop within one hundred fifty (150) feet of the existing distribution system; (2) within thirty (30) days of the request for service outside the Franchise Area where an extension of one-half mile or less (but more than one hundred fifty (150) feet) is required; or (3) within six (6) months for service outside the Franchise Area where an extension of one-half mile or more is required.
- (vii) Because existing conditions can vary dramatically, Franchisee may in its discretion require commercial customers to pay all reasonable costs of connection (including time and materials) in excess of the average cost of connection for residential services.

- 3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.
- 4. **Special Agreements.** Nothing herein shall be construed to prevent a Grantee from serving areas not covered under this section upon agreement with developers, property owners or residents.

Q. **Customer Service Reporting Requirements.** The City may require upon reasonable request that a Grantee periodically prepare and furnish to City semi-annual reports and any other reasonable information relevant to the Grantee's compliance with the customer Service requirements of this Chapter measured on a quarterly basis.

### 3.5 **Operation and Maintenance.**

- A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Code and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Code or the Grantee's Franchise. A Grantee 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 Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee'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 petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting the Cable System operations shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee 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 Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:
  - (i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;
  - (ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;
  - (iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, state, or local agencies during the preceding fiscal year and that were not previously filed with City;
  - (iv) A statement of the Grantee's current billing practices and charges;
  - (v) A copy, if any, of the Grantee's current Subscriber Service contract; and
  - (vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

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 Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee 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 Grantee if the audit reveals a discrepancy of two percent or more from the information related to the City.
3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

D. **Index of Reports.**

1. Every Grantee shall compile and maintain an Index of Reports, that shall list all reports, documents, and filings, that it has prepared with respect to the Cable

System over the course of the past two years as a result of the requirements of the FCC or this Chapter or Code or Franchise, including technical Cable System testing, and proof of performance reports and customer service compliance measurements, and shall provide a copy of such Index of Reports to the City annually, and upon written request.

2. A Grantee shall make a copy of any reports or documents listed in the Index of Reports available to the City upon request.

E. **Additional Reports and Assistance.** Upon request of the City, a Grantee shall add additional reports to the Index, which are reasonably necessary to the City's proper enforcement of this Chapter, Code or Franchise. The City shall require such reports only through passage of a formal resolution of the City. In addition, upon request, a Grantee shall cooperate and assist the City in interpreting and understanding any report required under this Chapter, Code or its Franchise, including through the provision of explanatory graphs and/or charts.

F. **Service Contract and Subscriber Information.**

1. A Grantee 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 Grantee to exercise its rights and perform its obligations under this Chapter and its 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 Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

### 3.6 **Financial Provisions, Remedies, Procedures and Due Process.**

A. **Annual Cable Franchise Fee.**

1. As compensation for grant of a 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 Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the term of its Franchise, a sum totaling five percent (5%) of the Grantee's Gross Revenues.
2. Not a Tax or in Lieu of Any Other Tax or Fee.
  - (i) The Franchise Fee is not a tax, license or fee subject to any requirement of voter approval, but rather is a rental charge for special and individualized use of public property.
  - (ii) The Franchise Fee is in addition to all other fees and all taxes and payments that a Franchisee or other person may be required to pay under any federal, state, or local law, including any applicable property and amusements taxes, except to the extent that such fees, taxes or assessments are a Franchise fee under 47 U.S.C. § 542.
3. Further, every Grantee shall market any "bundled" services to fairly reflect an appropriate and reasonable division of services among the various services offered. Whether or not a Grantee separates services on a Subscriber's bill, it



will provide to the City the amounts upon which it will pay the Communications Service Use Fee and any other applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Cable Service Franchise Fee. Should a Grantee engage in billing practices that, in the determination of the City, do not fairly reflect an appropriate split of Communications Services and Cable Television Services the City will notify the Grantee in writing of its determination. The parties will meet and discuss in good faith whether the billing practices result in an unfair payment of fees to the City. If the parties do not agree on an appropriate method of determining which charges are subject to Communications Service Use Fees and which are subject to the Cable Service Franchise Fee, the parties may subject the dispute to arbitration, or may resort to other methods of dispute resolution, including litigation. Taxes or fees which are not paid on the appropriate division of the bundled bill, when ultimately paid, will be subject to all interest and penalties provided by the applicable portion of this Code.

4. 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 Grantee showing the basis for the computation and a "Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Grantee's System.
  5. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Grantee or by audit as permitted by this Chapter, the Grantee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.
  6. In the event any Franchisee Fee or other payment is not made on or before the date specified herein, the Franchisee and any other Person shall pay interest charges computed from such due date, at an annual rate equal to the commercial prime interest rate of the City's primary depository bank during the period such unpaid amount is owed. In addition, Franchisee shall pay an additional sum of two per cent (2%) of the amount due to defray the City's additional expenses by reason of the delinquency.
  7. 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. City's right to audit, and the Grantee's obligations to retain records related to the Franchise Fee audit, shall expire six (6) years from the date on which each Franchise Fee payment by the Grantee is due.
- B. **Security Fund.** Each Grantee may be required to maintain a security fund with the City to ensure compliance with this Chapter, Code and applicable Franchise, in an amount and in a manner as set forth in the Grantee's Franchise.
- C. **Bonds, Indemnification, and Insurance.** Each Grantee shall maintain bonds and insurance with the City in amounts and in a manner as set forth in the Grantee's Franchise. Each Grantee also shall be required to indemnify the City in a manner as set forth in Chapter 1 and in the Grantee's Franchise.
- D. **Remedies and Enforcement Procedure.**

1. Whenever the City has reason to believe that a Grantee has violated any provision of this Code or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Grantee in writing of the violation and demand correction within a reasonable time, which shall not be less than thirty (30) days. If the Grantee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Grantee fails to correct the violation within the time prescribed, or if the Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the Governing Body. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Code or Franchise violations, including those in which grounds for revocation are considered.
2. At the public hearing, the Governing Body shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence.
3. In the event the City finds that the Grantee 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 the City finds that a violation exists and that the Grantee 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:
  - (i) 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;
  - (ii) For all other violations, \$250 per day per violation.

The City shall provide the Grantee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.
5. If the City elects to assess penalties or liquidated damages, then such election shall constitute the City's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee remains in non-compliance, the City may pursue any other available remedy, including Franchise revocation.
6. In the event that a Franchise is cancelled or terminated by reason of the default of the Grantee, the security fund deposited pursuant to the 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 Grantee.
7. 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 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.
8. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations, of the same general type, whether remedied or not.

E. **Grounds for Revocation.** In addition to any rights in this Code or applicable Franchise, the City reserves the right to utilize the above described enforcement procedure 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 Grantee are not able to mutually agree upon a cure or alternate remedy:

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

**F. Right of Appeal.**

1. Upon the imposition of a penalty or revocation decision, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of the decision by the Governing Body within which to file an appeal with a court of competent jurisdiction.
2. During any such appeal period, the Franchise shall remain in full force and effect.

**3.7 Foreclosure, Receivership and Abandonment.**

A. **Foreclosure.** Upon the foreclosure or other judicial sale of all or a part of the Cable System, or upon the termination of any lease covering all or part of the Cable System, a Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Grantee 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 Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred 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 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 Franchise.

**3.8 Purchase Of System.**

A. If a renewal or extension of a Franchise is denied without further right of appeal, or a 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 in accordance with and to the extent permitted by 47 U.S.C. § 547 as follows:

1. Upon revocation of a Franchise, such valuation shall not include any sum attributable to the value of the Franchise itself and plant and property shall be valued according to its book value at the time of revocation, or the Cable System's initial cost less depreciation and salvage whichever of the two is lower.
2. At the expiration of a Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

### 3.9 Sale Or Transfer Of Franchise.

- A. A Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under the Franchise. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.
- B. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets in the City; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in Grantee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System to an unaffiliated entity so as to create a new controlling interest in the Grantee. The term "controlling interest" as used herein means majority equity ownership of a Grantee.
- C. 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 Grantee's assets, including, but not limited to, the 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 Franchise or Cable System and thus shall not require compliance with this section.
- D. In the case of any sale or transfer of ownership of an interest in or control of a 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 granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.
- E. The City reserves any legal right it has under applicable law to require a Grantee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees. Such reimbursement shall not be considered a Franchise Fee.

### 3.10 Rights Of Individuals Protected.

- A. **Discriminatory Practices Prohibited.** A Grantee 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 Grantee shall strictly adhere to the equal employment opportunity requirements of state and federal law. Every Grantee 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 Grantee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

3.11 **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 Grantee 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 76.900, Subpart N. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N.
- B. **Rights Reserved to Grantor.** Upon either final non-appealable determination of non-renewal or revocation of a Franchise, Grantor shall have discretion to permit a Grantee 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 Grantee shall be in accordance with the terms and conditions of this Ordinance or Franchise, and shall provide the regular Subscriber service and any and all of the services that may be provided at that time.

**CHAPTER 4. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS**

- 4.1 **Rights-of-Way Ordinance.** A Provider shall be subject to and comply with the additional or supplementary terms and conditions of any City's "ROW Ordinance," passed or 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 and Agreement. The provisions of this Chapter 4 shall apply as provided herein to Providers, and to the full extent permitted by law, additionally to all construction activities in public utility easements.
- 4.2 **Permit Requirements.** At least thirty (30) days before the beginning of any installation, removal or relocation of its Facilities, the Provider shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within thirty (30) days of receipt of such plans, either approve the plans or inform the Provider of the reasons for disapproval. The Provider shall designate a responsible contact person with whom representatives of the City Engineer can communicate with on all matters relating to facilities installation and maintenance.
  - A. Prior to any excavation within the Rights-of-Way, the Provider shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City ROW Ordinance, and any subsequent ordinances or regulations that may be adopted by the City regarding excavation work.
  - B. The Provider shall post a bond with the City in accordance with the City's ordinances in an amount determined by the City Engineer, to guarantee the timeliness and quality of any construction, repair and restoration work, including damage to public or private property, and to guarantee the removal of its facilities from the City's Rights-of-Way should such removal be required upon the expiration of an Agreement.
  - C. Prior to the commencement of any construction or alteration of its facilities located in the Rights-of-Way, the Provider shall furnish to the City Engineer a subsurface utility engineering study on the proposed route of construction, expansion or alteration, which shall consist of the following tasks:
    - 1. All available plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route;
    - 2. Completion of a visual survey and written record of the location and dimensions of any above-ground features of any underground facilities along the proposed

construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs;

3. Plot and incorporate the data obtained from completion of task A and B above, on to the Provider's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files; and
  4. Provide all such data collected into a CADD file (or other format as may be identified by the City Engineer) compatible with that used by the City Engineer and deliver a copy to the City Engineer.
- 4.3 **Mapping of Facilities.** Each Licensee or Franchisee shall maintain and file with the City updated maps, in such form as may be required by the City Engineer, providing the location and sufficient detail of all Facilities existing in the Rights-of-Way on the effective date of any Agreement or Franchise, and those reasonably anticipated to be installed in each six-month period subsequent to the initial and updated filing, and such other related information as required by the City Engineer. Such maps shall be updated and kept current with the City.
- 4.4 **No Interference.** Provider shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Provider shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and maintenance by Provider or its subcontractors shall be performed in accordance with industry standards.
- 4.5 **Advertising, Signs or Extraneous Markings.** Provider shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Provider or any other person or entity on the public right-of-way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.
- 4.6 **Tree Protection.** Unless otherwise approved in writing by the City, in the attachment, installation, removal, reattachment, reinstallation, relocation or replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. Tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.
- 4.7 **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 Provider 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 Engineer do not have electrical service adequate or appropriate for the Provider'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 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 Provider 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 Provider, the City will cooperate in good faith with Provider 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 Provider.
- 4.8 **Location, Type and Design of Facilities Subject to Approval.** The design, 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. Except as provided herein, all Facilities constructed after the date of an Agreement shall be placed underground, and in conduit, where capable. Antenna or other Facilities may be located above-ground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached hereto. Unless extraordinary circumstances exist, good cause shall not include authorization for above-ground facilities requiring new poles or major modification to existing above-ground structures. Option 2: Except as provided herein, all Facilities constructed after the date of an Agreement shall be placed underground, and in conduit, where capable, unless existing above ground structures requiring no major modification are available. Major modifications of aboveground structures to accommodate Facilities or Antenna, or erection of new poles, will be allowed only if approved by the City Engineer for good cause or as may be specifically authorized in an Exhibit attached hereto. Above-ground pedestals, vaults, antennae or other Facilities, may be installed 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. The location, design and requirements for antennae in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. Where reasonable and appropriate and where adequate public rights-of-way exists, the Provider 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, antennae/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennae on other City owned or controlled property shall not be authorized by this Agreement, but if allowed under City Ordinances shall require a separate Lease or Use agreement with the City. 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 Engineer may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

- 4.9 **Notification, Joint Installation and Collocation Requirements.** Provider 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. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation. Any person unreasonably failing to respond to collocation opportunities or otherwise comply with this provision or policies adopted hereunder shall, unless good cause is found by the City, be precluded from use of the Rights-of-Way for a period of thirty (30) months at such locations that would reasonably have been accommodated by the collocation opportunity that was declined.
- 4.10 **Use of Facilities by others; required terms.** If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at 47 U.S.C. § 224.
- 4.11 **Additional Facilities Requirements; Planned Infrastructure.** When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Such policy shall be publicly available and each Agreement

shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. The City may reserve for its own purposes a portion of any Excess Conduit dedicated to the City, but shall make available any portion not so reserved to any and all subsequent Providers (or others as determined by the City) on a non-discriminatory basis for fair and reasonable compensation that shall be paid in addition to the Franchise or Use Fees. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied so as not to create an obstacle to entry in the market and on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider and dedicated to the City.

- 4.12 **Removal of Facilities.** Upon expiration of an Agreement, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of an Agreement within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Provider shall further, unless otherwise consented to by the City, remove all Facilities that have not been used for a period of more than one year. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal.
- 4.13 **Relocation of Facilities.** Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.
- 4.14 **No Cause of Action Against the City.** The Provider shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of any Agreement, 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 herein granted; provided that said Provider expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Agreement herein with Provider; provided further that the Provider acknowledges by its acceptance of said Agreement that it has not been induced to enter into an Agreement 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 an Agreement not expressed herein; provided further that the Provider acknowledges by the acceptance of an Agreement that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions. Nothing herein shall preclude Provider from seeking injunctive or declaratory judgment relief against the City where such relief is otherwise available and the requirements therefor are otherwise satisfied; provided, however, that the validity of an executed Agreement shall not be subject to challenge.
- 4.15 **Provider Responsible for Costs.** The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with Provider'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. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider 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.

- 4.16 **Insurance and Bonds.** During the term of an Agreement, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Agreement or Franchise. Nothing contained in this Code shall limit the Provider's liability to the City to the limits of insurance certified or carried.

## CHAPTER 5. MISCELLANEOUS

- 5.1 **Administration of Franchise.** The City shall be responsible for the continued administration of this Code and any Agreement or 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.
- 5.2 **Appeals.** Unless otherwise provided herein or by any generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Code to the governing body of City within fifteen (15) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.
- 5.3 **Non-Enforcement by the City.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Code or its applicable Agreement or Franchise by reason of any failure of the City to enforce prompt compliance.
- 5.4 **Penalties.** Any Person violating any provision of this Code shall be subject to a fine of \$500 per day per violation. 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 Use Fee or Franchise Fee. In addition to all other remedies; any Person who shall have installed Facilities in the Rights-of-Way prior to the effective date of this Code, or hereinafter, without the consent of the City shall be subject to pay as a penalty to the City three (3) times the Use Fees calculated from the date of installation to the earlier of the effective date of a lawful Use Agreement or Franchise with the City or the date the Facilities are properly removed; provided that if such Person accurately discloses the Facilities and applies for a lawful Use Agreement or Franchise within 30 days of the effective date of this Code, such Person may avoid this penalty by paying with the application the actual Use Fee amount calculated for such period, plus interest and other fees provided herein.
- 5.5 **Publication of Notices.** All public notices or ordinances required to be published by law shall be published in the official newspaper of the City. A Grantee shall be responsible for all costs of publication that may be required with respect to its Agreement or Franchise or any amendments thereto.
- 5.6 **Severability.** If any material Section of this Code or an Agreement or Franchise granted pursuant 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, Agreement or Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions therein.

