

Recommended by Finance Committee

BILL NO. 1937

ORDINANCE NO. 2000-1909

AN ORDINANCE ENACTING PROVISIONS TO MANAGE AND RECEIVE COMPENSATION FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF MARYLAND HEIGHTS, MISSOURI BY MULTIPLE PROVIDERS OF COMMUNICATIONS SERVICES AND OWNERS AND OPERATOR S OF COMMUNICATIONS FACILITIES

WHEREAS, The City Council finds and declares that the public Rights-of Way are valuable public property acquired and maintained by the City at great expense to the taxpayers; and

WHEREAS, the City should receive fair and reasonable compensation for other’s use of this property so controlled and maintained.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARYLAND HEIGHTS, MISSOURI AS FOLLOWS:

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TITLE I GENERAL PROVISIONS

Section 1.1 Legislative findings.

The City Council hereby finds and declares that:

- (1) the public rights-of-way within the City
 - (a) are used and useful for the travel of persons and the transport of goods and other tangibles in the business and social life of the community by all citizens;
 - (b) can be partially occupied by utilities and other public service entities for facilities used in the delivery, conveyance, and transmission of utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City of Maryland Heights and its citizens; and
 - (c) are physically limited so that proper management by the City is necessary to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses, to prevent foreclosure of future uses through premature exhaustion of available right-of-way capacity, and to minimize the inconvenience to the public from such facilities' construction, emplacement, relocation, and maintenance in the rights-of-way; and
 - (d) are valuable public property acquired and maintained by the state and City at great expense to the taxpayers; and
- (2) the City should
 - (a) recover its out-of-pocket costs for management of its rights-of-way; and
 - (b) receive fair and reasonable compensation for others' uses of the property controlled or maintained by it, taking into the account that the privilege to occupy portions of such public rights-of-way for limited times for the business of providing communications services is a valuable economic asset, without which, a provider would be required to invest substantial capital and incur substantial expense.

Section 1.2 Purpose.

The City Council adopts this ordinance to:

- (1) manage a limited resource so as to maximize the long-term benefit to the public;
- (2) recover the City's costs of maintaining and managing the public rights-of-way;
- (3) receive fair and reasonable compensation for the value of the public rights-of-way used by telecommunications and cable communications systems;
- (4) minimize inconvenience and costs to the public occasioned by the emplacement and maintenance of telecommunications facilities in the public rights-of-way;

(5) prevent premature exhaustion of capacity in the public rights-of-way to accommodate telecommunications, utility, and other public services; and

(6) provide for the development of cable communication systems as a means to improve communications between and among, and to otherwise serve the present and future needs of the citizens, government and private and public institutions, organizations and enterprises located within the boundaries of the City.

Section 1.3 Authority.

This ordinance is adopted pursuant to the City's powers including but not limited to those under the Missouri Constitution, R.S.Mo. §§ 77.010 and 77.520, and Section 253 of the Communications Act of 1934, as amended, 47 U.S.C. § 253.

Section 1.4 Title.

This ordinance is known and may be cited as the "Maryland Heights Telecommunications Right-of-Way Management Ordinance.

Section 1.5 Definitions.

As used in this ordinance:

(1) Affiliate. The term "affiliate," when used in relation to any person, means another person who de facto or de jure owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

(2) Applicant means a person who submits an application.

(3) Application means a request for authority to construct, emplace, replace, reconstruct, operate, or maintain a communications facility within the City, transfer a license or franchise, renew a license or franchise, or modify a license. An application includes the initial request plus all subsequent written amendments or supplements to the request.

(4) Basic cable service shall mean the lowest priced tier of service that includes the retransmission of local broadcast signals (as authorized) and public, educational, and government access programming.

(5) Cable Service shall mean (1) the one-way transmission to subscribers of video programming or other programming service; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(6) Cable System or System shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within the City, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any public rights-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the

provisions of Title II of the Communications Act, except that such facility shall be considered a cable system if such facility is used in the transmission of video programming directly to subscribers; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system. A reference to a cable system refers to any part thereof, including, without limitation, converters. The foregoing definition of “cable system” shall not be deemed to circumscribe or limit the valid authority of the City to regulate or franchise the activities of any other communications system or provider of communications services to the full extent permitted by law. Any franchise agreement shall define the services any franchisee is authorized to use the public rights-of-way to provide.

(7) City means the City of Maryland Heights in the State of Missouri.

(8) City Administrator means the City Administrator as set forth in Chapter 2, Article III, Division 3 of the City Code or his or her lawful designee.

(9) City Engineer means City Engineer as set forth in Chapter 2, Article IV, Division 5, Section 2-295 of the City Code or his or her lawful designee.

(10) Communications facility or communications system means tangible equipment used in the transmission of communications signals, whether or not in connection with the provision or offering of a “telecommunications service” as hereinafter defined. The term communications facility includes, without limitation, cable, wires, optical fibers, transmitters, power supplies, radio antennae, towers and other supporting structures, and associated facilities used to transmit or receive communications signals.

(11) Communications services means the transmission in whole or in part by wire, optical fiber, coaxial cable, or any other bounded, tangible means, whether or not the transmission medium is owned by the provider itself of information in electronic or optical form, including, but not limited to, voice, video, or data. Communications service includes but is not limited to telephone service and cable service, but does not include over-the-air broadcasts to the public at large licensed by the Federal Communications Commission and received directly over the air by the public at large, or as additionally allowed by the Missouri Public Service Commission.

(12) Council shall mean the City Council of Maryland Heights, Missouri.

(13) Federal Communications Commission (or FCC) means the Federal Communications Commission or any successor thereto.

(14) Franchise means an authorization granted by the City to a person to provide cable services via a cable system or an open video system (OVS).

(15) Franchise Agreement means a contract entered into pursuant to this Ordinance between the City and a franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a franchise will be granted and exercised.

(16) Lease means an agreement between the City and a telecommunications service provider or the owner or operator of a communications facility which authorizes the provider or owner or operator to locate a communications facility on property owned or controlled by the City, as specified therein, including but not limited to public rights-of-way, public buildings, and/or supporting structures which are either owned or controlled by the City or located upon property owned or controlled by the City. A lease

may be required in addition to a license or franchise to locate communications facilities on or in buildings, supporting structures, and/or conduits owned or controlled by the City and located within the public rights-of-way. The term does not include any license, franchise or permit, however denominated, that may be required by this Chapter or other laws, ordinance, or regulations of the City for the privilege of transacting and carrying on a business within the City generally, or work permit as may be required under City of Maryland Heights Ordinance No. 21, as it exists or may hereafter be amended.

(17) Lessee means a person that is a party to a Lease with the City or a person leasing, however denominated, communications facilities from a Licensee or Franchisee under this Ordinance, as the context may require .

(18) License means a legal authorization, however denominated, granted by any governmental body to the extent that body has jurisdiction over the rights-of-way in the City, to a person who is not a franchisee to install, construct, emplace hang, draw, bury, reconstruct, maintain, repair, replace, and/or operate communications facilities upon, along, across, beneath, or over any public right-of-way within the City for a purpose other than providing cable service or OVS service to persons located in this City for such term, for such purpose, and upon such terms and conditions as may be set forth in a license agreement. The term license does not include any license or permit, however denominated, that may be required by this Chapter or other laws, ordinances, or regulations of the City for the privilege of transacting and carrying on a business within the City general, or a work or construction permit which may be required as herein provided. Nothing in a license granted by the City shall be deemed to grant, convey, create, or vest a perpetual real property interest in land in the licensee, including any fee, leasehold interest, or easement. The City makes no representations or warranties with respect to the title to the Public Right-of-Way or the nature of the City's interest in the Public Right-of-Way. To the extent there are other interests, if any, in the Public Right-of-Way, a licensee must obtain the necessary consent for its use from each Person who holds any such interests.

(19) License agreement means a contract entered into between the City and a licensee, upon approval and acceptance by the City Council or which sets forth the terms and conditions under which such authority may be exercised. Each license agreement is subject to the provisions of this ordinance as this ordinance may be amended from time-to-time.

(20) Licensee means a person that holds a license as defined in subsection (18).

(21) Open Video System (or OVS) means a telecommunications facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, which includes video programming, which is provided to multiple subscribers within a community, and which the Federal Communications Commission or its successor has certified as compliant with Part 76 of the Rules of the Federal Communications Commission, 47 C.F.R., Part 76, as amended from time to time.

(22) Owner or operator of a communications facility means any person which has a possessory interest in such facility or which controls or is responsible for, through any arrangement, the management and operation of such facility.

(23) Person means any individual, corporation, partnership, association, joint stock company, trust, governmental entity, or any other legal entity, but not the City or State of Missouri.

(24) Public Rights-of-Way means the surface and space above, on, and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel, park, parkway,

waterway, dock, bulkhead, wharf, pier, public easement, right-of-way or any other public ground or water and as to which the City now or hereafter holds any property interest or other right, obligation or privilege that entails the management and control of access to and occupation of such property, and which, consistent with the purposes for which it is held, managed or controlled by the City, may be used for the purpose of constructing, operating, and maintaining a communications facility.

(25) Rental certificate is a document issued by the City Finance Department on request of a licensee which certifies the amount of revenue on which an annual fee has already been paid. The rental certificate is used in calculating the deduction from the compensation that would otherwise be owed to the City when the licensee is a lessee of communications facilities.

(26) Reseller means a person that provides one or more communications services for hire, which are carried in whole or in part by means of the services of one or more other providers or over one or more communications facilities in the public rights-of-way in which that person lacks a present possessory interest

(27) Telecommunications is the transmission of electronic data between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, or as may be further defined by Missouri law.

(28) Telecommunications service is the offering of telecommunications for hire directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(29) Transfer means the sale or transfer of a license or lease, or the sale or transfer, directly or indirectly, of an existing or newly created equity interest in the licensee or lessee which results in transfer of ownership or control, de facto or de jure, directly or indirectly of the licensee or lessee; provided, however, that a transfer of control among wholly owned subsidiaries of a common parent shall not be considered a transfer of control for the purposes of this ordinance and, provided further, that a change of ownership that does not result in a transfer of control shall not be consider a transfer for the purposes of this ordinance.

A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation of five percent (5%) or more of the ownership of a entity by any person or group of persons acting in concert, none of whom already own or control fifty percent (50%) or more of such right or control, singularly or collectively

(30) Video programming means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

(31) Video programming services. The term "video programming services" includes the provision of video programming for a fee or other compensation.

(32) Work permit means an authorization issued by the City to enter upon the public rights-of-way at such times, for such duration, subject to such terms and conditions, and for such limited purposes as may be set forth therein, including but not limited to excavation and construction activities, the installation or emplacement of communications facilities, and the reconstruction, repair, maintenance, relocation, operation, disconnection, removal or replacement of any communications facility located upon, across, beneath, or over any public right-of-way in this City, or located so proximate to such public right-of-way that access to such public right-of-way may be necessary or desirable to the person seeking

such authority. Such permits are issued by the City Engineer pursuant to Ordinance No. 21 as amended from time-to-time or superseded.

Section 1.6 Registration Required.

No person shall (1) install, construct, emplace, maintain, repair, replace, and/or operate a communications facility upon, across, beneath, along, or over any public right-of-way or other property owned or controlled by this City or (2) provide communications services over such a communications facility thus located, without first registering with the City in a manner prescribed by the City Administrator or his designee.

Section 1.7 Authorization Required.

No person shall (1) install, construct, emplace, maintain, repair, replace, and/or operate a communications facility upon, across, beneath, along, or over any public right-of-way or other property owned or controlled by this City or (2) provide communications services over such a communications facility thus located, without first entering into an agreement or a lease, pursuant to Titles II, III or IV of this Ordinance, that provide for the payment of fair and reasonable compensation to the City for the use of the public rights-of-way or other property so used or occupied by such communications facility.

Section 1.8 Work Permit Required.

No person shall enter upon the public rights-of-way to install, construct, emplace, maintain, repair, replace, or remove communications facilities, or to engage in excavation or construction activities in connection therewith, without such work permit issued by the City Engineer as may be required by City Ordinance No. 21, as amended.

Section 1.9 Administration.

(1) The City administrator shall have the responsibility for overseeing the day-to-day administration of this Ordinance. The City administrator shall be empowered to take all administrative actions on behalf of the City except for those actions specified in this Ordinance that are reserved by the Council. The City administrator shall keep the Council apprised of developments with respect to this Ordinance and shall provide the Council with assistance, advice, and recommendations on this Ordinance as appropriate.

(2) The Council has the sole authority to: grant franchises, licenses and leases, enter into franchise, license or lease agreements, modify franchise, license, or lease ordinances, renew licenses, franchises or leases, revoke licenses, franchises, or leases and authorize the transfer of licenses, franchises, or leases.

(3) All filings and reports required of franchisees, licensees, or lessees or applicants pursuant to this Ordinance shall be made with the City Clerk unless otherwise specified.

Section 1.10 Records.

(1) A licensee, franchisee or lessee shall file with the City true and accurate maps or plats of all existing and proposed installations under its franchise and on arterial roads. These maps and plats shall be in the form directed by the City Engineer and shall be kept continuously current.

(2) Each franchisee or licensee and the affiliates thereof, wherever located, shall maintain true and accurate books, records, and accounts sufficient to document the obligations of each franchisee or licensee under this ordinance. Licensee shall keep books and records in conformity with generally accepted accounting principles, consistently applied, showing all income, expenses, borrowing, payments, investments in capital, and all other transactions relating to the licensee's facilities in the City.

(3) The Licensee shall provide that information in such form as may be required by the City, as well as copies of any records of Licensee upon City's request, so long as said information is directly or indirectly related to the scope of City's rights under this Ordinance, the License, or City's regulatory functions. Such books, records, and accounts shall be maintained and available for inspection for a period of five years; provided, however, that such books, records, and accounts shall be maintained and available during the continuation of any audit by or on behalf of the City commenced during such five-year period or during any dispute or litigation with respect thereto.

(4) A licensee, franchisee, or lessee shall keep on file with the City Clerk a current list of its officers (with current addresses), bond holders, and all shareholders holding over five (5) percent of the outstanding stock, showing the amount of such ownership. Filings shall be deemed current, if filed within the times provided by federal law for publicly traded corporations.

(5) A licensee or franchisee shall maintain separate financial records governing its operations in the City.

(6) Access to a licensee's or franchisee's records shall not be denied by the licensee or franchisee on the basis that records contain "proprietary" information. Refusal to provide information required herein to the City shall be grounds for revocation of a license or franchise. All such information received by the City shall remain confidential insofar as permitted by the Missouri Open Meetings Law and other applicable state and federal law.

(7) The franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

(8) All reports and records required pursuant to this Ordinance shall be furnished at the sole expense of Franchisee or Licensee, except as otherwise provided in this Ordinance or the Franchise or License.

Section 1.11 Parental Guarantee.

A licensee, franchisee, or lessee shall file with the City an unconditional guarantee of performance. This guarantee shall be signed by the licensee, franchisee, or lessee and any ultimate parent thereof. The City Administrator may recommend to the City Council alternative assurances in lieu of a parental guarantee, where circumstances warrant.

Section 1.12 Enforcement.

(1) In addition to all other rights and powers pertaining to the City by virtue of any franchise, license, this Ordinance or otherwise, the City reserves the right to impose penalties or liquidated damages, revoke, terminate, or reduce the term of any franchise or license and all rights and privileges of a franchisee or licensee thereunder in the event that the franchisee or licensee:

(a) Defaults in the performance of any of its material obligations under its franchise or license, this Ordinance, or under such documents, contracts and other terms and provisions entered into by and between the City and the franchisee or licensee;

(b) Fails to provide or maintain in full force and effect, the liability and indemnification coverage as required herein;

(c) Frequently and materially violates any orders or rulings of any regulatory body having jurisdiction over the franchisee or licensee relative to this franchise or license unless such orders or rulings are being contested by the franchisee or licensee in a court of competent jurisdiction;

(d) Fails to receive necessary FCC approvals within the applicable and appropriate time;

(e) In the case of a franchisee, subject to Title II, ceases or fails to provide services for reasons within the control of the franchisee. A franchisee shall not be declared at fault or be subject to any sanction under any provision of its franchise or this Ordinance in any case in which performance of any such provision is prevented for reasons beyond the franchisee's control; or

(f) Attempts to evade any of the provisions of this Ordinance or its franchise or license agreement or practices any fraud or deceit upon the City.

(2) Ordinance Violation. Any person who knowingly violates any prohibition in this ordinance shall be guilty of a violation of this ordinance and upon conviction thereof shall be fined the amount of \$500.00 per day for each day that such violation is proven to have occurred or continued.

(3) Injunctive relief. In addition to any other remedies hereunder, the City may seek an injunction or other judicial relief to mitigate or terminate a violation, or employ any other remedy available at law or equity

(4) Revocation, reduction of term and forfeiture of facilities.

(a) In the event that the City believes that a franchisee or licensee has not complied with the terms of its license or franchise, the City shall notify the licensee or franchisee in writing of the exact nature of the alleged noncompliance.

(b) Franchisee or licensee shall have thirty (30) days from receipt of the notice described in subsection (b) above to:

(1) Respond to the City contesting the assertion of noncompliance; or

- (2) Cure such default; or
- (3) In the event that, by the nature of the default, such default cannot be cured within the thirty-day period, the franchisee shall initiate reasonable steps to remedy such default and notify the City Administrator of the steps being taken and the projected date that they will be completed.

(c) Forfeiture of facilities. Any communications facility constructed, maintained, or operated in this City in material violation of this ordinance, including but not limited to default as to timely payment of annual fees hereunder, is subject to forfeiture; and the City may seize, disable, remove, or destroy such facility upon thirty days' advance notice in writing to the owner or operator thereof; provided, however, that where the safety of any person or property lawfully within the public rights-of-way is endangered thereby, only such notice as is practicable under the circumstances need be given.

(d) Reduction of term. Where, after notice and after a hearing, if timely requested by a licensee or lessee, the City Administrator finds that a communications facility is being operated in material violation of its license agreement or lease terms or of this Ordinance, the City Administrator may make an appropriate reduction in the remaining term of the license or lease after a hearing, at which the licensee or lessee shall have the burden of proof. Such a hearing shall not be required before the City Administrator's action if the licensee or lessee waives the hearing in writing.

(e) Revocation.

(1) A license or franchise may be revoked by the City on the recommendation of the City Administrator and with the approval of the City Council; provided, however, the City Administrator shall have then given further notice of the City's intention to revoke the license or franchise for failure to timely correct the breach or violation, and advising the licensee or franchisee of its right to demand, within ten (10) days, an administrative hearing, which hearing, if requested, shall be presided over by the City Administrator or designee.

(2) Following such administrative hearing as the licensee or franchisee may demand, or upon the failure to make timely demand for an administrative hearing, the City Administrator or designee may request public comments on the proposed revocation. The City Administrator or designee shall make a recommendation with respect to the revocation of the license or franchise.

(3) The City Council shall give public notice of its intention to consider the revocation of a license or franchise, and shall hold a public hearing thereon unless waived by the licensee; and shall thereafter determine by written resolution or other form of decision whether to revoke the license based on the recommended decision, the advice of the City Administrator, information presented at the public hearing, and other evidence in the record. The resolution or other form of decision shall set forth the particulars of the breach of the license agreement or violations of the ordinance which was the basis for the revocation.

(4) Subject to applicable federal and state law, in the event the Council, after such meeting, determines that a licensee or franchisee is in substantial default of a material provision of the license or franchise, the Council may declare the license or franchise to be revoked.

(5) In a situation where a license or franchise is revoked, in removing its plant, structures and equipment, the licensee or franchisee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public rights-of-way and public property in as good condition as prevailed prior to the franchisee's removal of its equipment and appliances without effecting the electrical or telephone cable wires, or attachments. The City shall inspect and approve the condition of the public rights-of-way and public property. Liability, indemnity, and insurance as provided herein shall continue in full force and effect during the period of removal and until full compliance by the licensee or franchisee with the terms and conditions of this subsection and this Ordinance.

(6) In the event of a failure by a licensee or franchisee to complete any work required by subsection (g) above, or any other work required by City law or ordinance within the time as may be established and to the satisfaction of the City, the City may cause such work to be done and the licensee or franchisee shall reimburse the City the cost thereof within thirty (30) days after receipt of an itemized list of such costs. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(7) Upon the revocation of a franchise, the City may require the franchisee to continue to operate the system for a period not to exceed six (6) months from the date of such revocation. The franchisee shall, as trustee for its successor in interest, continue to operate the system under the terms and conditions of its franchise and to provide cable service that may be provided at that time. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(8) The termination and forfeiture of any license or franchise shall in no way affect any of the rights of the City or a licensee or franchisee under the license or franchise or any provision of law.

(5) Rescission of a Lease. A lease may be rescinded, revoked or terminated by the City Administrator or designee after notice of a material breach of the terms of the lease agreement or a violation of this ordinance; provided, however, that the City Administrator or designee shall first give written notice to the lessee of the particulars of such breach or violation and the lessee shall have failed to correct such breach or violation within thirty (30) days or such greater time as the City Administrator or designee may by notice allow.

(6) No Waiver. The failure of the City to insist on timely performance or compliance by any person holding a license, franchise, lease, or work permit shall not constitute a waiver of the City's right to later insist on timely performance or compliance by that person or any other person holding such a license, franchise, lease, or work permit.

Section 1.13 Term of franchise, license or lease.

A franchise, license or lease granted pursuant to this ordinance shall be for a period of ten years, except that lesser terms may be specified in particular cases. Licenses and leases may be renewed upon

timely application by the licensee or lessee, for a term and on such conditions and at a fee or rent accepted by the City. The renewal of any franchise to provide cable service shall be conducted in a manner consistent with applicable federal law.

Section 1.14 Franchise or License Fee; Audit.

(1) A franchisee or licensee shall pay to the City such per foot fee or percentage of its gross revenues as may be set by ordinance from time to time. A franchisee or licensee shall file with the City within forty-five (45) days after the expiration of each quarter year ending on December 31, March 31, June 30, and September 30 (or on such dates as may be provided in its franchise based on franchisee's or licensee's fiscal year) a financial statement certified and attested to by corporate officers of the franchisee or licensee, showing in detail by category as directed by the City Administrator, the gross revenues during the preceding quarter, and shall simultaneously pay to the City the sum herein prescribed.

(2) 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 and copy records during normal business hours and the rights to audit and to recompute any amounts determined to be payable under this Ordinance, whether the records are held by the Franchisee or Licensee or any other person that collects or receives funds related to the provision of cable service or other communications services over a Franchisee's or Licensee's communications facility or system in the City. City shall provide at least ten days notice prior to inspection. The Franchisee or Licensee shall be responsible for providing the records to the City or its representative at the Franchisee or Licensee's principal place of record-keeping. The records, including general ledger and P&L support documentation shall be maintained for at least five (5) years. The Franchisee or Licensee shall pay the City's audit expenses, including but not limited to audit costs and transportation costs to the site where a Franchisee or Licensee keeps its records pertaining to the System; 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. Additionally, 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.

(3) No acceptance of payment by the City shall operate as a release of a franchisee's or licensee's obligation hereunder.

(4) Payments pursuant to this section shall not be considered in the nature of a tax, but rather as rental and shall be in addition to any and all taxes now or hereafter applicable to a franchisee or licensee by law.

(5) Any payment not made by the applicable date under subsection (a) of this section or under a franchise or license shall bear interest at three (3) percent above the average prime rate of major banks in metropolitan St. Louis as determined by the City Administrator. The interest on said payments shall be calculated on a per annum basis.

(6) When a franchise terminates for whatever reason, the franchisee must file with the City within ninety (90) calendar days of the date its operations cease in the City, a report of gross revenue, certified by an independent certified public accountant, relevant to the franchised system showing the gross revenues received by the franchisee since the end of the previous fiscal year. Franchise fees due to the date that the franchisee's operations ceased must be paid at the same time.

Section 1.15 Transfers and assignments.

(1) A franchise and/or a license shall be deemed a revocable privilege that is held in the public trust and personal to the original franchisee or licensee. No transfer of a franchise or license, no assignment of the franchise or license agreement, and no delegation of the franchisee or licensee's rights or duties under its franchise or license agreement to a person other than franchisee or licensee shall be effective or permitted without prior notification to, and express approval by, the City. No franchise or license shall be sold, transferred, or assigned, nor shall a change in control of a franchise or license, or franchisee or licensee, de facto or de jure, take effect until an application in proper form has been filed with and approved by the City, except in circumstances and upon terms and conditions as expressly provided in a franchise or license agreement.

(2) At least 120 calendar days prior to the effective date of a transfer, the franchisee or licensee shall submit to the City an application for approval of the transfer, in such form as the City Administrator or designee may require, disclosing the legal, financial, technical, and other qualifications of the transferee, and such further information as may be required under applicable regulations, a particular franchise or license agreement, or the City Administrator or designee with respect to a particular transfer.

Section 1.16 Construction.

(1) No person, including a licensee, franchisee or lessee shall enter upon the public rights-of-way to engage in excavation and construction activities, the installation or emplacement of communications facilities, or the reconstruction, repair, maintenance, relocation, operation, disconnection, removal or replacement of any communications facility except upon the authority of a work permit, which shall describe with particularity or by reference to the application therefore the activity authorized, the time or times during which such activity is permitted, and such further terms and conditions as the City Administrator may prescribe pursuant to the authority delegated herein.

(2) No work permit shall be issued except upon demonstrated compliance with the R.S.Mo. Chapter 319.015 - 319.050, Missouri Underground Facility Safety and Damage Prevention program.

(3) No work permit shall be issued for the construction of antennae or other above ground structures that would unreasonably impede or impair access to the underground equipment of any other authorized occupant of the public rights-of-way, or that is not in demonstrated compliance with any applicable zoning restrictions or requirements.

Section 1.17 Security Fund.

(1) Prior to a license or franchise becoming effective, a franchisee must post with the City's Finance Director a cash security deposit to be used as a security fund to ensure the faithful performance of all provisions of law, the license or franchise, and with all orders, permits and directions of the City pertaining to said license or franchise, and the payment by the licensee or franchisee of any claims, liens, fees, or taxes due the City that arise by reason of the construction, operation, or maintenance of the communications facilities. The security deposit shall be in the amount of ten thousand dollars (\$10,000.00).

(2) The Finance Director shall place the security deposit in an interest-bearing account. The interest will accrue to the benefit of the licensee or franchisee, but may not be withdrawn. All interest will be added to, and become part of, the security fund during the term of the license or franchise.

(3) If the City determines to exercise its rights to withdraw funds from the security fund, the City may, after ten (10) calendar days written notice to the franchisee, withdraw said funds from the security fund unless, within such ten-day period, the franchisee objects to such withdrawal and requests in writing a hearing before the Council. The City shall notify the franchisee in writing of the amount and date of any withdrawal.

(4) Within thirty (30) calendar days after written notice of a withdrawal, the franchisee must deposit a sum of money sufficient to restore the security fund to the original amount. If the franchisee fails to so restore the fund the entire fund remaining may be forfeited, and/or such failure may be considered a material breach of this Title and may be used as grounds for revocation of the franchise.

(5) Following the termination of a franchise, the franchisee is entitled to the return of that portion of the security fund that remains, provided that there is no outstanding default or unpaid amounts owed to the City by the franchisee. Any such unpaid amounts due the City shall be withdrawn from the security fund prior to its final release.

(6) No action, proceeding, or exercise of a right with respect to the security fund will affect any other right the City may have.

Section 1.18 Indemnification and insurance.

(1) Each franchisee, licensee or lessee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, Councils, commissions, Commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, and attorneys' fees incurred in connection therewith, arising out of the activities authorized by each franchise, license or lease, including, but not limited to, the installation, construction, emplacement, maintenance, repair, replacement, and/or operation of a communications facility; the infringement or misappropriation of any copyright, patent, trade secret or other intellectual property right, which arises in connection with use of its communications facilities; the conduct of the franchisee's, licensee's or lessee's business in the City; or in any way arising out of the franchisee's, licensee's or lessee's enjoyment or exercise of the franchise, license or lease, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this ordinance or the franchise, license or lease.

(2) A licensee or franchisee shall maintain insurance throughout the term of its license or franchise in the amounts at least as follows:

- (a) Workers' compensation: Statutory limits
- (b) Commercial general liability: \$2,000,000.00 per occurrence Combined single liability (C.S.L.)
- (c) Auto liability including coverage on all owned, non-owned and hired autos: \$2,000,000.00 per occurrence (C.S.L.)
- (d) Umbrella liability \$1,000,000.00 per occurrence (C.S.L.)

(3) The City shall be added as an additional insured to the above commercial general liability, auto liability, and umbrella liability insurance coverage.

(4) A licensee or franchisee shall furnish the City with the current certificates of insurance evidencing such coverage, prior to construction.

(5) The minimum amounts set forth herein for such insurance shall not be construed to limit the liability of a franchisee to the City under a license or franchise issued hereunder to the amounts of such insurance.

(6) Nothing in this Ordinance shall be construed or interpreted as a waiver of the City's sovereign immunity granted pursuant to Missouri Statutes.

(7) The certificate of insurance shall be accompanied by a certificate from the Secretary of State of Missouri and a certificate from the Missouri Department of Insurance, which authorize the insurance company to conduct business within Missouri. The insurance company must have attained, and shall maintain for the duration of said insurance a rating from A.M. Best's or Standard and Poor's of not less than "A" as evidence of its solvency. A certificate from the original issuing company stating that the insurance is in effect shall also be submitted.

(8) This section requires the telecommunications provider to be specifically held liable for its negligence, willful misconduct, acts and omissions. Similarly, the City may be held liable for its own negligence, willful misconduct, acts and omissions.

Section 1.19 Reservation of Rights; police power.

No license, franchise or work permit shall estop or otherwise limit the City in the full exercise of its governmental powers to protect the health and safety of the public, and all other governmental powers may be fully exercised except as expressly provided herein. The City expressly reserves the right to amend this ordinance from time to time in the exercise of its legislative powers.

Section 1.20 Public notices.

Minimum public notice of any public meeting relating to amendment of this Ordinance or any franchise, license or lease granted hereunder shall be by publication at least once in a newspaper of general circulation in the area at least five (5) days prior to the meeting, posting at City Hall and by announcement on the franchisee's local origination channel for five (5) consecutive days prior to the meeting, unless specified otherwise in this ordinance.

Section 1.21 Severability.

In the event that the courts should find any section of this ordinance to be unconstitutional or otherwise unlawful, the remainder of the ordinance shall be construed in a way that will effect the Council's purpose to the greatest extent possible.

TITLE II CABLE COMMUNICATIONS

Section 2.1 Definitions.

As used in this Title II:

(1) "Gross Annual Revenue" or "Gross Annual Receipts" or "Gross Receipts" means all revenue, as determined in accordance with Generally Accepted Accounting Principles, which is received, directly or indirectly, by Franchisee and by each Affiliated Person from or in connection with the distribution of any Cable Service, and any other Service which may, under now or then applicable federal law, be included in the Cable Act definition for the purpose of calculating and collecting the maximum allowable franchise fee for operation of the System, whether or not authorized by any Franchise, including, without limitation, leased or access channel revenues received, directly or indirectly, from or in connection with the distribution of any Cable Service. It is intended that all revenue collected by the Franchisee, and by each Affiliated Person, from the provision of Cable Service over the System, whether or not authorized by the Franchise, be included in this definition. Gross Annual Revenue also specifically includes: (i) the fair market value of any nonmonetary (i.e., barter) transactions between Franchisee and any Person, other than an Affiliated Person, but not less than the customary prices paid in connection with equivalent transactions; (ii) the fair market value of any nonmonetary (i.e., barter) transaction between Franchisee and any Affiliated Persons, but not less than the customary prices paid in connection with equivalent transactions conducted with Persons who are not Affiliated Persons; and (iii) any revenue received, as reasonably determined from time to time by the City, through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the Franchise granted. Gross Annual Revenue also includes any bad debts recovered. Gross Annual Revenue also includes all advertising revenue which is received directly or indirectly by Franchisee, any Affiliated Person, or any other Person from or in connection with the distribution of any Service over the System or the provision of any Service-related activity in connection with the System. Gross Annual Revenue does not include: (i) the revenue of any Person to the extent that said revenue is also included in the Gross Annual Revenue of Franchisee; (ii) taxes imposed by law on Subscribers which Franchisee is obligated to collect; and (iii) amounts which must be excluded pursuant to applicable law.

(2) Service area shall mean the incorporated areas of Maryland Heights, and shall include any additions thereto by annexation or other legal means.

(3) State of the art shall mean that level of production facilities, technical performance, capacity, equipment, components, and service equal to that which has been developed and demonstrated to be more modern than generally accepted and used in the cable communications industry for comparable areas of

equivalent population, provided that it is economically feasible in the service area at any given time throughout the term of a franchise.

(4) Subscriber shall mean any person or entity who subscribes to and pays for a service provided by a franchisee by means of the system.

Section 2.2 Franchise required.

No person shall construct or operate a cable system or any part thereof within the City unless he shall have been granted a franchise under this title and such franchise shall be in full force and effect in accordance with its terms and this Ordinance.

Section 2.3 Grant of franchise; franchise characteristics.

(1) The provisions of this Ordinance shall be incorporated by reference into every such franchise.

(2) The right to use and occupy said public rights-of-way and public property for the purposes herein set forth, shall not be exclusive, and the City reserves the right to grant a similar use of said public rights-of-way and public property to any other person at any time.

(3) A franchise does not expressly or implicitly authorize a franchisee to provide service to, or install cables, wires, lines, or any other equipment or facilities upon private property without owner consent (except use of compatible easements as otherwise provided by law), or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners.

Section 2.4 Territorial area of a franchise.

Any franchise granted pursuant to this Ordinance shall be applicable only to such portion of the City as is specifically designated within said franchise.

Section 2.5 Initial application for a franchise.

(1) Every person initially proposing to serve the City or an area thereof shall present such information as necessary to assist the City in evaluating the effect of granting the requested franchise. Such information shall be in a form specified by the City Administrator and shall include, but not be limited to:

(a) The capacity of the public right-of-way and related easements to accommodate the proposed system as well as present and future users.

(b) The extent and frequency of potential disruption of the public rights-of-way, including utility services, existing cable services, and vehicular traffic, the impact on private property rights, or the impact on public convenience.

(c) The financial ability of the applicant to perform, including detailed financial information about the applicant and the economic assumptions made by the applicant.

(d) The proposed system design, including but not limited to, the proposed location of the head end and/or hubs, initial and maximum channel capacity, proposed bandwidth capacity, and type of equipment required by subscriber to connect a television to the system.

(e) Such other societal interests as may be relevant to cable communications franchising, including, but not limited to the ability to provide adequate public, educational and government access channel capacity, facilities or financial support, and the applicant's commitment to local origination programming.

(2) The person submitting an application shall appear upon request at all public hearings or committee meetings set by the Council to consider his application.

(3) After complying with the above requirements, the Council, following a public hearing, and consideration of the testimony presented at the public hearing, including the person's application and all relevant information as prescribed under subsection (a), shall approve or disapprove the proposed franchise request.

(4) If the City authorizes or permits more than one system to operate in a service area, the City shall include in such a franchise agreement a provision that a franchisee shall do so on the condition that it will indemnify and hold harmless the City from and against all claims that arise directly and solely from the construction of the additional system and which are incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, and all other costs, including those of the existing franchisees, the City, and utilities, incident to inspections, make ready, and/or construction of an additional system in the service area.

Section 2.6 Duration, acceptance, and renewal of a franchise.

(1) A franchise and the rights, privileges, and authority granted thereunder shall take effect and shall be in force from and after final passage of the ordinance granting it, and shall continue in force and effect for the term stated therein, which shall be not more than ten (10) years; provided that not more than thirty (30) days after the effective date of the ordinance granting a franchise or renewal thereof, the franchisee shall file with the City Clerk its acceptance of the franchise, which shall have this Title incorporated therein by reference. Such acceptance shall be in writing by a corporate officer of the franchisee.

(2) Should a franchisee fail to comply with subsection (a) above, it shall acquire no rights, privileges, or authority under its franchise whatever.

(3) A franchise may be renewed upon the terms and conditions set forth in subsection (a). Any application for the renewal of a franchise shall be made in accordance with the substantive and procedural requirements as set forth under Section 626 of the Cable Communication Policy Act of 1984, as amended from time to time.

(4) In setting forth the duration of a franchise, the Council shall consider such factors as it deems appropriate, including, but may not be limited to, the extent to which the proposed franchise will meet the needs of the community during the proposed term of said franchise, a franchisee's current performance with respect to customer service issues, technical picture quality, its efforts regarding local origination programming, and its service to the community.

Section 2.7 Construction bond.

(1) Prior to the issuance by the City of any permits for construction in the public rights-of-way, a franchisee shall present, or have on file with the City, a performance bond, separate and apart from the security fund set forth in section 1.16 of this ordinance, running to the City with one (1) good and sufficient surety approved by the City Attorney. The franchisee shall maintain said bond throughout the period of initial construction or reconstruction of the system as set forth in the franchise. The bond shall have a penal sum of than five hundred thousand dollars (\$500,000.00) This bond shall be conditioned upon the faithful performance of the franchisee and upon the further condition that, in the event that the franchisee shall fail to complete the required construction of the system as set forth in the franchise, there shall be recoverable, jointly, and severally, from the principal and the surety of the bond any damage or loss suffered by the City as a result of said construction, including the full amount of any cost of removal or abandonment of any property of the franchisee, plus an allowance for reasonable attorney's fees and costs up to the full amount of the bond.

(2) The bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the City Clerk by registered mail of a copy of a written notice of such intent to cancel or not to renew.

(3) The bond shall be accompanied by a certificate from the Secretary of State of Missouri and a certificate from the Missouri Department of Insurance, which authorize the bonding company to conduct business within Missouri. The bonding company must have attained, and shall maintain for the duration of said bond, a rating from A.M. Best's or Standard and Poor's of not less than "A" as evidence of its solvency. A certificate from the original issuing company stating that the bond is in effect shall also be submitted.

(4) The bond and the certifications required in (c) above shall be filed and maintained with the City Clerk.

(5) Upon substantial completion of all construction within the public rights-of-way authorized or required by its franchise, a franchisee may request in writing to the Council that the bond be reduced to an amount of ten thousand dollars (\$10,000.00) or two (2) times the estimated cost of the remaining construction, whichever is greater. Upon the completion of all remaining construction the franchisee shall request in writing that the requirement for said bond be ended. The Council shall, after satisfying itself of the appropriateness of such request, approve the franchisee's request for reduction or cancellation of the required performance bond. Prior to any additional required construction within the public rights-of-way within the service area, a performance bond as described in subsection (a) shall be submitted and maintained during said additional construction in its original penal sum.

Section 2.8 Receivership and foreclosure.

(1) A franchise shall, cease and terminate one hundred twenty (120) days after the appointment of a receiver, receivers, trustee, or trustees to take over and conduct the business of the franchisee whether in a receivership, reorganization, bankruptcy, or other action or proceeding. Provided, however, that a franchise may be reinstated *at the City's sole discretion* if, within that one hundred twenty-day period:

(a) Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this article and the franchise granted pursuant hereto, and the receiver(s) or trustee(s) within said one hundred twenty (120) days shall have remedied all defaults under the franchise; and

(b) Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by both the court having jurisdiction over the premises and the city, whereby such receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of the franchise.

(2) Notwithstanding the foregoing, in the case of a foreclosure or other judicial sale of the plant, property, and equipment of a franchisee, or any part thereof, the council may serve notice of termination upon the franchisee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the franchisee thereunder shall cease and terminate thirty (30) days after service of such notice, unless:

(a) The council shall have approved the transfer of the franchise to the successful bidder or his assignee; and

(b) Such successful bidder shall have covenanted and agreed with the city to assume and be bound by all the terms and conditions of the franchise and this article.

Section 2.9 System design.

(1) Any system authorized under this Ordinance shall:

(a) Be operated and maintained in full compliance with the standards set forth by the FCC;

(b) Provide for an audio override of all channels during emergencies or disasters, whereby the City and/or a designee of St. Louis County, approved by the franchisee, may introduce an audio emergency message on all channels of the system simultaneously. Should the FCC promulgate regulations requiring a visual override during emergencies, the franchisee shall comply with said regulations;

(c) Make available to its subscribers, a signal scrambling device capable of rendering cable service inaccessible or accessible, subject to the subscriber's discretion;

(d) Provide audio services; and

(e) Provide local access channels and such other mutually agreed to services necessary to enhance the City's ability to inform its citizens.

(2) A franchisee shall monitor technological developments in the cable communications industry and shall, at the request of the City, consult on upgrading with such state of the art facilities as are required to meet substantial unfilled needs and interest in commercially available programming, where the cost of such upgrade may be fully recovered from the incremental revenue derived from such additional programming.

(3) Any material change in the system's design from that approved in the franchise which significantly alters the method by which subscribers access cable service, reduces the quality or level of service, and/or which is not state of the art shall require the prior approval of the Council.

Section 2.10 Interconnection of cable systems.

(1) A franchisee shall so construct, operate, and modify its system, so as to have the capability to interconnect the same into all adjacent systems.

(2) A franchisee shall cooperate with the City, any interconnection corporation, regional interconnection authority, or state or federal agency that currently or may hereafter be established, for the purpose of interconnecting systems within or beyond the boundaries of the City in order to facilitate the provision of public, educational, or governmental access services to the widest possible audience.

Section 2.11 System performance.

(1) A franchisee shall design, install, and operate its system in full compliance with the standards set forth by the Federal Communications Commission. Procedures for testing the capacity of a franchisee's system shall conform with the standards as set forth in Title 47 CFR, Part 76, Subpart K of the FCC Rules and Regulations, as amended from time to time.

(2) Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, installations, or adjustments, a franchisee shall do so at such times as will cause the least amount of inconvenience to its customers. Unless such interruption is of short duration or is unforeseen and immediately necessary, the franchisee shall give reasonable notice thereof to its customers.

Section 2.12 Consumer Protection.

(1) Applicability. This Section 2.12, with the exception of Subsections (3) and (5)(a) which shall apply to all franchisees, shall apply only to franchisees operating under franchise agreements granted or renewed after the effective date of this ordinance.

(2) General Provisions. This Section 2.12 sets forth customer service standards that a franchisee must satisfy. In addition, the franchisee shall at all times satisfy any additional or stricter requirements established by FCC regulations, or other applicable federal, state, or local law or regulation, as the same may be amended from time to time.

(a) Nothing in this Ordinance may be construed to prevent or prohibit:

(1) the City and a franchisee from agreeing to customer service requirements that exceed the standards set forth in this ordinance;

(2) the City from enforcing, through the end of a franchise term, pre-existing customer service requirements that exceed the standards set forth in this Ordinance and are contained in current franchise agreements;

(3) the City from enacting or enforcing any customer service or consumer protection laws or regulations; or

(4) the establishment or enforcement of any City law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in this Ordinance, a franchise agreement or federal or state law;

(5) the City from waiving, for good cause, requirements established in this Section 2.12.

(b) Nothing in this Ordinance in any way relieves a franchisee of its obligation to comply with other applicable consumer protection laws and its franchise agreement.

(3) A customer complaint procedure shall be established and maintained by each franchisee, subject to the approval of the City. This procedure shall be fully set out within a franchise.

(4) Installations, Connections, and Other Franchisee Services.

(a) Standard Installations. Except as federal rate regulations may otherwise require, the franchisee shall not assess a subscriber any cost other than a standard installation charge for service drops of one hundred fifty (150) feet or less, for a single outlet, unless the franchisee demonstrates to the City's satisfaction that extraordinary circumstances justify a higher charge.

(b) Non-Standard Installations. Except as applicable law may otherwise require, where a drop exceeds one hundred fifty (150) feet in length, a franchisee may charge a subscriber for franchisee's actual costs associated with installing the drop beyond one hundred fifty (150) feet, provided that drop length shall be the shorter of (1) the actual length of the installed drop or (2) the shortest distance to the point where the franchisee would be required to extend its distribution system. The subscriber's preference as to the point of entry into the residence shall be observed whenever feasible. Runs in building interiors shall be as unobtrusive as possible. The franchisee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken as soon as possible after the damage is incurred and shall be completed within no more than thirty (30) days after the damage is incurred.

(c) Location of Drops. In locations where the franchisee's system must be underground, drops must be placed underground as well. Except as federal law may otherwise require, in any area where a franchisee would be entitled to install a drop above-ground, the franchisee will provide the homeowner the option to have the drop installed underground if requested, but may charge the homeowner the difference between the actual cost of the above-ground installation and the actual cost of the underground installation.

(d) Time for Extension. Where a franchisee is required under this Section 2 to provide service to a person, it must provide such service

(e) within 30 days of the person's request if such person resides no further than one hundred fifty (150) feet from the franchisee's distribution system;

(f) within sixty days if the person resides more than one hundred fifty (150) feet from the franchisee's distribution system, but the distribution system need not be extended for one-half mile or more to provide service; and

(g) within six months if an extension of the distribution system for one-half mile or more is required.

(h) Deposits. A franchisee may require a reasonable, non-discriminatory deposit on equipment provided to subscribers, in addition to any allowable monthly rental fees. Any subscriber deposit required by franchisee shall bear interest in accordance with applicable law or at the going rate, which shall be not less than the prime rate of the bank being used by the City for the conduct of ordinary business. All deposits, with interest, shall be returned to the subscriber within thirty (30) days after termination of service or return of the equipment, whichever is sooner.

(i) Antennas and Antenna Switches. A franchisee shall adhere to FCC regulations regarding antenna switches. A franchisee shall not, as a condition to providing cable service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.

(j) Delinquent Accounts. A franchisee shall use its best efforts to collect on delinquent subscriber accounts before terminating service.

(5) Telephone and Office Availability.

(a) A franchisee shall maintain a business office within St. Louis County, not more than eight (8) miles from the intersection of Dorsett Road and Interstate 270, which subscribers may telephone during normal business hours without incurring added message or toll charges, so that maintenance service shall be promptly available.

(b) Each franchisee will maintain at least one local, toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, seven days a week. Trained representatives of a franchisee shall be available to respond to subscriber telephone inquiries during normal business hours.

(c) Under Normal Operating Conditions, the following standards shall be met by a franchisee at least ninety (90) percent of the time, measured quarterly.

(d) Telephone answering time shall not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds.

(e) A customer will receive a busy signal less than three percent (3%) of the time.

(f) When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. Inquiries received after hours must be responded to by a trained representative of a franchisee on the next business day. To the extent possible, the after-hours answering service shall comply with the same telephone answer time standard set forth in this Section.

(g) A franchisee must hire sufficient staff so that it can adequately respond to customer inquiries, complaints, and requests for service in its office, over the phone, and at the subscriber's residence.

(6) Scheduling and Completing Service.

Under Normal Operating Conditions, each of the following standards shall be met by all franchisees at least 95% of the time, as measured on a quarterly basis:

(a) Prompt Service. Installations located up to 150 feet from a franchisee's existing distribution system shall be completed within seven (7) business days after the order is placed. Installations not located within 150 feet from a franchisee's existing distribution system shall be completed within ten (10) business days after the order is placed. System outages affecting more than 500 subscribers shall be acted upon within four hours after the Grantee becomes aware of the outage, including Saturdays, Sundays, and legal holidays. Repairs and maintenance for service interruptions and other repairs not requiring work within a subscriber's premises must be completed within twenty-four (24) hours after the subscriber reports the problem to the franchisee or its representative or the interruption or need for repairs otherwise becomes known to the franchisee. Work on all other requests for service must be begun by the next business day after notification of the problem. All such work must be completed within three (3) days from the date of the initial request, except installation requests, provided that a franchisee shall complete the work in the shortest time possible where, for reasons beyond the franchisee's control, the work could not be completed in those time periods even with the exercise of all due diligence; the failure of a franchisee to hire sufficient staff or to properly train its staff shall not justify a franchisee's failure to comply with this provision.

(b) Service Times. Each franchisee shall perform service calls, installations, and disconnects at least during normal business hours. In addition, maintenance service capability enabling the prompt location and correction of major system malfunctions shall be available Monday through Friday from the end of normal business hours until 12:30 a.m., and from 8:00 a.m. until 12:30 a.m. on Saturdays, Sundays, and holidays.

(c) Appointments. The appointment window for installations, service calls, and other installation activities will be either a specific time or, at maximum, a 4-hour time block during normal business hours.

(d) Cancellations. A franchisee may not cancel an appointment with a subscriber after the close of business on the business day preceding the appointment. If a franchisee's representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber will be contacted, and the appointment rescheduled, as necessary, at a time which is convenient for the subscriber.

(e) Emergency Maintenance. A franchisee shall keep an emergency system maintenance and repair staff, capable of responding to and repairing system malfunctions or interruptions, on a twenty-four (24) hour basis.

(f) Other Inquiries. Under Normal Operating Conditions, billing inquiries and requests for service, repair, and maintenance not involving service interruptions must be acknowledged by a trained customer service representative within twenty-four (24) hours, or prior to the end of the next business day, whichever is earlier. A franchisee shall respond to all other inquiries within five (5) business days of the inquiry or complaint.

(g) Except as federal law requires, no charge shall be made to the subscriber for repairs or maintenance of franchisee-owned equipment or facilities, except for the cost of repairs to the franchisee's equipment or facilities where it can be shown that the equipment or facility was damaged by a subscriber.

(h) If a subscriber experiences a missed appointment due to the fault of a franchisee, the franchisee shall pay the subscriber twenty (20) dollars for each missed appointment, or such other amount as the City and the franchisee may agree, in addition to any other penalties or liquidated damages.

(i) Mobility-Limited subscribers. With regard to mobility-limited subscribers, upon subscriber request, each franchisee shall arrange for pickup and/or replacement of converters or other franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

(7) Interruptions of Service.

A franchisee may intentionally interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to fix the affected subscriber's service problems, only after a minimum of forty-eight (48) hours prior notice to subscribers and the City of the anticipated service interruption; provided, however, that planned maintenance that does not require more than two (2) hours' interruption of service and that occurs between the hours of 12:00 midnight and 6:00 a.m. shall not require such notice to subscribers, but shall require notice to the City no less than twenty-four (24) hours prior to the anticipated service interruption.

(8) Notice to Subscribers.

(a) A franchisee shall provide the following materials to each subscriber at the time cable service is installed, at least annually thereafter, and at any time upon request. Copies of all such materials provided to subscribers shall also be provided to the City.

(1) a written description of products and services offered, including a schedule of rates and charges, a list of channel positions, and a description of programming services, options, and conditions;

(2) a written description of the franchisee's installation and service maintenance policies, delinquent subscriber disconnect and reconnect procedures, and any other of its policies applicable to its subscribers;

(3) written instructions on how to use the cable service;

(4) written instructions for placing a service call;

(5) a written description of the franchisee's billing and complaint procedures, including the address and telephone number of the City office responsible for receiving subscriber complaints;

(6) a copy of the service contract, if any;

(7) notice regarding subscribers' privacy rights pursuant to 47 U.S.C. § 551;

(8) notice of the availability of universal remote controls and other compatible equipment (a list of which, specifying brands and models, shall be provided to any subscriber upon request).

(b) Subscribers will be notified of any changes in rates, programming services or channel positions, and any significant changes in any other information required to be provided by this section, as soon as possible in writing. Written notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator.

(c) All franchisee promotional materials, announcements, and advertising of residential cable service to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, a franchisee shall take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers before the order is accepted.

(d) Each franchisee shall maintain a public file containing all notices provided to subscribers under these customer service standards, as well as all promotional offers made to subscribers. Copies of all such notices, promotional or special offers sent to subscribers, and of any agreements used with subscribers or other users, shall be filed promptly with the City.

(7) Billing

(a) Bills shall be clear, concise, and understandable. Bills must be fully itemized with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(b) Refund checks to subscribers shall be issued promptly, but no later than the later of --

(1) the subscriber's next billing cycle, or thirty (30) days, following resolution of the refund request, whichever is earlier; or

(2) the return of all equipment supplied by the franchisee, if service is terminated.

(c) Credits for service shall be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.

(d) A franchisee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.

(e) A franchisee's billing statement must show a specific payment due date not earlier than the midpoint of the period for which the service being billed is rendered (*e.g.*, the fifteenth day of a thirty-day billing cycle). Any balance not received by seven (7) days after the end of the period for which the service being billed is rendered may be assessed a late fee not exceeding 1.5% of the bill, or such other amount as the City and the franchisee may agree, consistent with state and local law. The late fee shall appear on the following month's billing statement.

(f) A franchisee must notify the subscriber that he or she can remit payment in person at the franchisee's business office and inform the subscriber of the address of that office.

(g) Subscribers shall not be charged a late fee or otherwise penalized for any failure by a franchisee, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.

(h) The account of any subscriber shall be credited a prorated share of the monthly charge for the service upon the subscriber's reasonably prompt request and, without a subscriber's request, in any case where the franchisee can identify the affected subscribers, if said subscriber is without service or if service is substantially impaired for any reason for a period exceeding four (4) hours during any twenty-four (24) hour period, except where it can be documented that a subscriber seeks a refund for an outage or impairment which that subscriber caused, or in the case of a planned outage occurring between the hours of 12:00 midnight and 6:00 a.m. of which the subscriber had prior notice.

(i) The account of any subscriber shall be credited a share, prorated by time, of that subscriber's monthly charge for all services if any service purchased by that subscriber is deliberately interrupted by the franchisee for any reason for a period exceeding fifteen (15) minutes other than by reason of an emergency (for example, if a franchisee substitutes other programming on a channel for the programming normally carried on that channel and purchased by the subscriber), provided that this subsection shall not prevent the franchisee from making permanent changes in its channel lineup or programming to the extent otherwise permitted by applicable law.

(j) A franchisee shall respond to all written billing complaints from subscribers within thirty (30) days.

(8) Disconnection/Downgrades.

(a) A subscriber may terminate service at any time.

(b) A franchisee shall promptly disconnect or downgrade any subscriber. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers by any franchisee. So long as the subscriber returns, or permits the franchisee to retrieve, any

equipment necessary to receive a service within five (5) business days of the disconnection, no charge may be imposed by any franchisee for any cable service delivered after the date of the disconnect request.

(c) A subscriber may be asked, but not required, to disconnect a franchisee's equipment and return it to the business office.

(d) Any security deposit and/or other funds due the subscriber shall be refunded on disconnected accounts after any customer premises equipment provided by the franchisee has been recovered by the franchisee. The refund must be made within thirty (30) days or by the end of the next billing cycle, whichever is earlier, from the date disconnection was requested (or, if later, the date on which any customer premises equipment provided by the franchisee is returned).

(e) If a subscriber fails to pay a monthly subscriber fee or other fee or charge, a franchisee may disconnect the subscriber's service; however, such disconnection shall not be effected until after forty-five (45) days from the beginning of the period for which the service being billed is rendered, plus at least ten (10) days' advance written notice to the subscriber in question of intent to disconnect, given after the 45 days have elapsed. If the subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the franchisee shall not disconnect service. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee shall promptly reinstate service.

(f) A franchisee may immediately disconnect a subscriber if the subscriber is damaging or destroying the franchisee's cable system or equipment. After disconnection, the franchisee shall restore service after the subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and amounts owed the franchisee for damage to its cable system or equipment.

(g) A franchisee may also disconnect a subscriber that causes signal leakage in excess of federal limits. Disconnection may be effected after five (5) days' written notice to the subscriber, if the subscriber fails to take steps to correct the problem. In addition, a franchisee may disconnect a subscriber without notice where signal leakage is detected originating from the subscriber's premises in excess of federal limits, provided that the franchisee shall immediately notify the subscriber of the problem and, once the problem is corrected, reconnect the subscriber.

(h) If a franchisee fails to remove its property from a subscriber's premises within thirty (30) days of the termination of service, the property shall be deemed abandoned, unless such subscriber is responsible for the franchisee's failure to remove such property.

(i) A franchisee shall reconnect service to customers wishing restoration of service, provided such a customer shall first satisfy any previous obligations owed.

(9) Changes in Service.

(a) A franchisee may not alter the service being provided to a class of subscribers (including by retiering, restructuring or otherwise) without the express permission of each subscriber, unless it complies with this Section, except to the extent that federal law specifically

provides that the franchisee must be permitted to make such alterations in a manner inconsistent with this Section.

(b) At the time a franchisee alters the service it provides to a class of subscribers, it must provide each subscriber sixty (60) days' notice, explain the substance and full effect of the alteration, and provide the subscriber the right to opt to receive any combination of services thereafter offered by franchisee.

(c) No charge may be made for any service or product that the subscriber has not affirmatively indicated it wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

(d) A franchisee not subject to effective competition shall not require a subscriber to purchase any service other than basic service as a condition of purchasing premium or pay-per-view programming.

(10) Parental Control Option. A franchisee shall make available to any subscribers upon request the option of blocking the video or audio portion of any channel or channels of programming entering the subscriber's home. The control option described herein shall be made available to all subscribers requesting it when any cable service is provided, or reasonably soon thereafter.

(11) Enforcement.

(a) A franchisee shall keep such records as are necessary to show compliance with these customer service standards and FCC customer service standards.

(b) A franchisee shall file annually with the City a statement signed by an officer or employee certifying compliance with these customer service standards and FCC customer service standards for each calendar quarter. Each such certification shall be filed with the franchisee's annual report. If a franchisee is unable to certify full compliance for each calendar quarter, it must indicate in its filing each standard with which it is in compliance, and in non-compliance statement.

(c) If a franchisee in non-compliance with any standard during any calendar quarter, it shall include in its annual filing a statement specifying areas of non-compliance, the reason for the non-compliance and a remedial plan.

(d) An officer or employee of a franchisee who knowingly and intentionally signs a false compliance certificate or noncompliance statement shall be guilty of a violation of this Ordinance punishable by up to 90 days in jail or a fine of \$500 or both.

(e) A franchisee that fails to file a compliance certificate or noncompliance statement as required herein shall be liable for the penalty specified for violation of customer service standards herein.

(f) In addition, except as prohibited by federal law, a franchisee shall be subject to penalties, forfeitures and any other remedies or sanctions available under federal, state or local law, including without limitation this Ordinance and a franchisee's franchise with the City, if it fails to comply with the standards herein.

(12) Exclusive Contracts and Anticompetitive Acts Prohibited.

(a) No franchisee shall enter into an exclusive contract for the provision of cable service with any person (including, but not limited to, a building owner), or demand the exclusive right to serve a person or location as a condition of extending service.

(b) No franchisee shall engage in acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service in the City, except for such actions as are expressly authorized by federal or state law.

A customer complaint procedure shall be established and maintained by each franchisee, subject to the approval of the City. This procedure shall be fully set out within a franchise.

Section 2.13 Access channels.

(1) The City may establish requirements in a franchise with respect to the designation and use of channel capacity in a franchisee's system for public, educational, or governmental use, to the extent allowed under Section 611 of the Cable Communications Policy Act of 1984, as may be amended from time to time.

(2) A franchisee shall designate channel capacity for commercial use in accordance with Section 612 of the Cable Communications Policy Act of 1984, as may be amended from time to time.

(3) A franchisee may combine partially used access channels onto a single channel and may make use of any unused access channels for its own purposes.

(4) A franchisee shall, in any case, maintain at least one (1) full channel for shared access programming, which also may be combined with the franchisee's local origination channel.

(5) Whenever any of the channels required in subsections (a) or (d) of this section is in use by persons other than the franchisee during eighty (80) percent of the week for eight (8) consecutive weeks, the franchisee shall have six (6) months in which to make a new channel available for transmission of access programming which cannot be accommodated on other channels then in use for access programming.

(f) Educational channel allocation.

(1) A franchisee shall make a good faith effort to comply with the following requirements:
(1) Provide and maintain three (3) channels for the educational use of the cooperating school districts; and
(2) Provide and maintain one (1) channel for the educational use of the higher education center.

(2) A franchisee shall provide a full-time interconnection of said channels described in subsection (a) between the franchisee's head-end and a technical center approved by the City and St. Louis County.

Section 2.14 Service to public buildings.

A franchisee shall provide, without charge, not less than one (1) cable outlet and service to each educational and local governmental facility in the City. Such cable service shall include all cable programming, except for non-advertiser supported programming, offered on a per-channel or per-program basis. The installation of such outlets shall not require special equipment or extraordinary materials. If more than one (1) outlet is requested at any of the said facilities, the franchisee shall install the same at the cost of time and material only. In no event will there be a monthly service charge of said facilities, unless a request is made for per-channel or per-program services, or other auxiliary services, to the extent that a franchisee is allowed under its contract with the programming suppliers.

Section 2.15 Rates and charges.

(1) A franchisee shall have the right to charge and collect compensation from all subscribers to whom it shall furnish services on its system. The rate schedule to be charged customers shall be kept on file with the City Clerk at all times and no change in such schedule shall be made without first filing the changed schedule with the City clerk thirty (30) days prior to the effective date. A franchisee must also provide subscribers to the cable system with written notification of any such additions or amendments at least thirty (30) days before the same become effective.

(2) A franchisee, however, may: 1) conduct promotional campaigns in which rates are discounted or waived; 2) make special contracts for nonprofit charitable, educational, governmental, and religious organizations; 3) offer bulk rate discounts on multiple unit dwellings, hotels, motels, or similar institutions; and 4) submit special rates to commercial accounts as approved under applicable FCC Rules and Regulations. Except for those discounts set forth herein, rates for each type or category of service or product will be uniform throughout the service area.

(3) The City may, at its option, regulate such rates as it is authorized to regulate by federal law or regulation.

(4) If the City assumes rate regulation, then it shall do so in accordance with Title 47 CFR, Part 76, Subpart N of the FCC Rules and Regulations, or as amended from time to time.

Section 2.16 Franchise fee.

(1) Until otherwise provided, the franchise fee shall be five (5) percent.

(2) All costs incurred by a franchisee hereunder are not franchise fees, and fall within one (1) or more of the exceptions set forth in 47 U.S.C. § 542(g)(2) and shall not be passed on to subscribers.

(3) A franchisee shall report on a quarterly basis to the City Clerk the name and address of each and every person providing communications services over the system for which charges are assessed to subscribers but not received by the franchisee.

(4) The license fee payment for each calendar quarter must be accompanied by a report that contains the following information relating to that calendar quarter:

a. The total gross receipts collected by Licensee, and an itemization of the all categories of revenues collected monthly during that calendar quarter.

b. The total number of subscribers to each tier of service that is offered in the franchise service area.

c. The total number of subscribers in the regional cluster that includes the Licensee's franchise service area, and such related information concerning those subscribers as may be required by City to verify and validate Licensee's calculations as to the proration of revenues, such as those derived from advertising sales and home shopping commissions, among City and other local franchising authorities that constitute the regional cluster.

d. The methodology used by Licensee in determining any proration of revenues, such as those derived from advertising sales and home shopping commissions, among City and other local franchising authorities that constitute the regional cluster.

(5) Licensee acknowledges its obligation to pay the annual franchise fee specified above in paragraph (a), which is the maximum percentage amount authorized by the Cable Communications Policy Act of 1984 ("Cable Act") on the effective date of this Agreement. If Congress, the FCC, or a court of competent jurisdiction alters this franchise fee requirement in a manner that materially changes the benefits or obligations of either party, then the parties agree to comply with the requirements of such applicable law.

Section 2.17 Safety requirements.

(1) Each franchisee shall at all times take reasonable precautions for preventing failures and accidents that are likely to cause damage or injury to the public, to employees of the franchisee and the City, and to public or private property.

(2) All lines, equipment, and facilities within the service area shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

Section 2.18 Conditions of public right-of-way occupancy.

(1) All transmission and distribution structures, lines, and equipment erected by a franchisee within the service area shall be so located as to cause minimum interference with the proper use of public rights-of-way and public property, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the public rights-of-way and public property. The system shall be constructed and operated in compliance with all local, state and national construction and electrical codes and shall be kept current with new codes. A franchisee shall install and maintain its wires, cables, fixtures, and other equipment in such manner that they will not interfere with any installations of the City or of any public utility serving the City. Whenever practical and possible, the system shall utilize existing poles and easements. All poles and conduit installed within the service area shall be made available for attachment or use by the franchisee, at just and reasonable rates applied to public utilities under the formula presently established in 47 U.S.C. § 244, or as may be amended from time to time.

(2) Before any construction is commenced in a street, a franchisee shall obtain an approved permit from the City Engineer and any other permits as may be required by law, and provide forty-eight (48) hours notice prior to start of construction. A franchisee shall not be immune from any inspection fees associated with obtaining such permits. The City Engineer shall have the right to inspect all construction or installation work performed by a franchisee in the City's public rights-of-way. A franchisee must restore private property and public thoroughfares to their former conditions in a manner approved by the City Engineer. If this is not done within a reasonable amount of time, the City or private property owners may, after prior notice to the franchisee, cause repairs to be made at the expense of the franchisee.

(3) In the maintenance and operation of the system, and in the course of new construction or additions to its facilities, a franchisee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the public right-of-way made by a franchisee shall be guarded and protected at all times by the placement of adequate safety devices, which shall be clearly designated by warning lights.

(4) If at any time during the period of a franchise, the City shall lawfully elect to alter or change the grade of any public right-of-way, the franchisee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

(5) Any poles or other fixtures placed in any public right-of-way by a franchisee shall be placed in such manner as not to interfere with the usual travel on such public way.

(6) A franchisee shall, on the request of any person holding the necessary permits, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the franchisee shall have the authority to require such payment, in advance. A franchisee shall be given not less than seventy-two (72) hours (excluding weekends and holidays) advance notice to arrange for such temporary wire changes.

(7) A franchisee may trim trees on private property at the franchisee's expense, with prior approval of the property owner. A franchisee may trim trees on public rights-of-way at its own expense, but only after written notification to and the approval of the City Engineer. In addition, removal of trees from public rights of way for new construction shall first require permits from the City Engineer to be obtained by the franchisee.

(8) In all sections of the service area where all cables, wires, or other like facilities of public utilities are placed underground, the franchisee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology permits the franchisee to do so.

(9) A franchisee shall at its expense, protect, support, temporarily disconnect, relocate in the same public right-of-way or public property, or remove from the public right-of-way, any property of the franchisee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by public agencies; provided, however, the franchisee shall in all such cases have the privilege and be subject to the obligations to abandon any property of the franchisee in place.

(10) The City shall have the reasonable right to make additional use for any public or municipal purpose, of any poles or conduits controlled or maintained exclusively by or for a franchisee in any public right-of-way provided such use by the City does not interfere with the use by the franchisee. The City shall indemnify and hold harmless the franchisee against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages, costs, or liabilities of every kind and nature whatsoever arising out of such use of franchisee's poles and/or conduits.

Section 2.19 Erection and removal of poles.

(1) No poles or other wire-holding structures shall be erected by a franchisee without prior approval of the City with regard to location, height, type, and any other pertinent aspect.

(2) No location of any pole or wire-holding structure of a franchisee shall be considered a vested interest and such poles or structures shall be removed and modified by the franchisee at its own expense whenever the City determines that the public convenience shall be enhanced thereby.

Section 2.20 Filings by franchisees.

(1) Copies of all non-confidential petitions, applications, communications and reports submitted by a franchisee to the FCC, the Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over a franchisee's system, shall be provided to the City in a timely manner.

(2) Copies of any pleading or notice filed by a franchisee relating to any proceeding involving action that may result in any event described in section 2.9, in any court or tribunal, shall be filed with the City immediately on filing or receipt.

Section 2.21 Records.

(1) The City shall have the right to inspect and copy during normal business hours at any office of the franchisee located in the metropolitan St. Louis area, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, programs, and disks or other storage media and other like material which the City deems appropriate in order to monitor compliance with the terms of this Ordinance, a franchise, or applicable law. Specifically excluded from this requirement are personnel records of the franchisee and contracts for programming services beyond basic cable service.

(2) The franchisee is responsible for collecting the information and producing it at the location specified above, and by accepting a franchise it affirms that it can and will do so. The franchisee will make suitable copying equipment available to the City and will bear the cost of such copying, which cost is not a franchise fee and falls within one (1) or more of the exceptions of 47 U.S.C. § 42(g)(2).

Section 2.22 Franchise modification procedures.

(1) During the term of a franchise, a franchisee may need to request from the City modifications of its franchise. Any required modification request by a franchisee not related to equipment, facilities, and service issues must be submitted to the Council in writing. Upon a written request by a franchisee for a modification of its franchise, the Council shall have sixty (60) days within which to render a decision approving or disapproving the modification request. If such a decision is not rendered within sixty (60) days of the written request, such request will be deemed approved.

(2) If a modification request is made by a franchisee on matters involving issues related to the franchisee's equipment, facilities, and services, the Council shall follow all procedures as set forth under Section 625 of the Cable Communications Policy Act of 1984, or as amended from time to time.

(3) It shall be the policy of the City to liberally amend a franchise to enable the franchisee to take advantage of any developments in the field of transmission of video, audio, digital, and data signals, which will afford it an opportunity to more effectively, efficiently and/or economically serve its customers.

Section 2.23 City's rights.

(1) The City may amend this Title to incorporate amendments to federal law that are applicable. Any provision herein in conflict with or preempted by federal law shall be superseded.

(2) The City reserves the right to further amend this Title if it finds it necessary to protect the public health, safety and welfare. Such amendments shall be reasonable and not be in substantial conflict with federal or state law.

(3) In the event that the federal government or other governmental agency allows the City to exercise powers which it does not have at the time a franchise agreement is granted, the City reserves the right to amend the agreement to exercise those powers.

(4) The City may inspect all construction or installation work during such construction or installation, or at any time after completion thereof, in order to insure compliance with the provisions of this Ordinance and all other governing agreements.

Section 2.24 City's right of intervention.

A franchise shall include a waiver of any objection of the City's intervention in any suit or proceeding to which a franchisee is a party.

Section 2.25 Federal regulations.

The City and each franchisee shall acknowledge and adhere to all applicable federal rules and regulations, as they relate to cable communication systems. All ordinances and parts of ordinances in conflict with provisions of this Title, the Cable Communication Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, Rules and Regulations established by the Federal Communications Commission, and any other applicable federal statute related to this subject, are hereby repealed.

Section 2.26 Discrimination prohibited.

(1) Unless approved by the City, and to the extent consistent with federal law, no franchisee may in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, make or grant undue preferences or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system, nor subject any such persons to any undue prejudice or any disadvantage; provided, however, franchisees may offer discounts in order to attract or maintain subscribers, provided that such discounts are offered on a nondiscriminatory basis within the service area. A franchisee must not deny, delay, or otherwise burden service or discriminate against subscribers or users based on age, race, creed, religion, color, sex, disability, national origin, marital status, or political affiliation, except for discounts for the elderly and disabled that are applied in a uniform and consistent manner.

(2) A franchisee shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges of employment because of age, race, creed, religion, color, sex, disability, national origin, marital status, or political affiliation.

TITLE III OPEN VIDEO SYSTEMS

Section 3.1 Applicability.

This Title applies to the operators of open video systems. A license to operate an open video system does not authorize the provision of non-cable services.

Section 3.2 Right-of-Way Franchise Fee.

The operator of an open video system shall pay quarterly a right-of-way franchise fee in lieu of a cable franchise fee equal to that amount that would otherwise be due as a cable franchise fee under Section 2.20 (Franchise Fee) of this ordinance.

Section 3.3 Application for Right-of-Way Franchise.

(1) A person proposing to use public rights-of-way to install devices for the operation of an open video system shall first obtain authorization from the City of Maryland Heights for such use. Such a person may apply for such authorization by submitting an application containing:

(a) The name and address of the applicant and an identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with three percent or more ownership interest in the applicant and its affiliates; the persons who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other business affiliation and cable system ownership interest of each named person.

(b) A detailed description of the physical facilities the applicant proposes to place in public ways.

(c) Any information that may be reasonably necessary to demonstrate compliance with the requirements of federal law and with this ordinance.

(d) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the application meets all federal and state law requirements.

(2) The City of Maryland Heights may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this section.

(3) Upon the City of Maryland Heights' grant of open video system authorization, the applicant shall pay to the City of Maryland Heights an application fee to be determined by Resolution of the City Council. This payment shall be non-refundable and shall be used to offset in whole or in part any costs incurred by the City of Maryland Heights in granting the authorization.

Section 3.4 Additional Requirements.

To the extent permitted by federal, state or local law, operators of open video systems, comply with the provisions of Title II.

TITLE IV TELECOMMUNICATIONS SERVICES

Section 4.1 Applicability.

This title applies to the provision of telecommunications services for hire using facilities in the public rights-of-way but does not include such provision of cable services. This title does not apply to communications facilities owned or operated by a person for its own internal use in a business.

Section 4.2 License or Lease Required.

(1) No person shall (1) install, construct, emplace, maintain, repair, replace, and/or operate a communications facility upon, across, beneath, along, or over any public right-of-way or other property owned or controlled by this City or (2) provide telecommunications services over such a communications facility thus located, without first entering into an agreement or a lease that provides for the payment of fair and reasonable compensation to the City for the use of the public rights-of-way or other property so used or occupied by such communications facility.

(2) The provisions of this Ordinance apply to communications systems and their owners or operators existing on the effective date of this Ordinance and thereafter. Communications facilities existing as of the effective date of this Ordinance shall come into compliance pursuant to Section 6.2 of this Ordinance.

(3) If a communications facility has more than one owner or operator, each such owner or operator must obtain a license, or lease subject to the provisions of this Ordinance.

(4) The City may grant one or more licenses or leases in accordance with this Ordinance. Each such license or lease shall be non-exclusive.

(5) An owner or operator of communications facilities may be required to hold different authorizations for its use of the public rights-of-way for different categories of services. For example, and without limitation, the owner or operator of communications facilities that provide both cable service and other communications services must obtain both a cable franchise and a license. The holder of a City-wide license shall not be required to obtain a lease to use a particular part of the public rights-of-way for its facilities, but may be required to obtain a lease to use City property other than the public rights-of-way.

Section 4.3 Administration.

(1) City Administrator.

The City Administrator or a designee shall from time-to-time –

(a) promulgate regulations and procedures, which shall set forth the requirements of license applications and the procedure for conducting such public hearings in connection therewith as may be deemed appropriate by the City Administrator or requested by the applicant and the generally applicable terms and conditions upon which such licenses shall be considered, issued, denied and/or renewed. The City Administrator or designee is further authorized to impose such additional terms and conditions upon the grant of particular licenses, and to recommend to the City Council such additional terms and conditions upon the grant of particular licenses as may be necessary to protect the public health, safety and convenience in particular circumstances notwithstanding that such terms and conditions are not generally applicable.

(b) evaluate license applications, negotiate the terms and conditions of license agreements, execute such license agreements on behalf of the City as have been approved by the City Council, and issue licenses and renewals thereof, all in accordance with this ordinance and pursuant to regulations and procedures promulgated and published by the City; provided, however, that the City Administrator shall not deny an application for a license hereunder except upon authority of the City Council on a vote taken to approve or reject the City Administrator's recommendation that such application be denied.

(c) negotiate the terms and conditions of leases and execute leases on behalf of the City, in accordance with this ordinance and pursuant to regulations and procedures promulgated and published by the City Administrator ,

(d) collect the fees and rents authorized hereunder and audit compliance with the compensation provisions of licenses and lease agreements;

(e) place in each license or lease a stipulation that the license or lease, until its termination, shall be considered executory for the purposes of the Bankruptcy Code; and

(f) enforce the terms and conditions of licenses leases, and other such instruments authorizing the use or employment of public rights-of-way of the City for communications facilities and services.

(2) City Engineer.

The City Engineer shall issue work permits to authorized licensees and lessees, in conformance to the authority granted by such license or lease and in accordance with this ordinance and pursuant to

regulations and procedures promulgated and published by the City Engineer; and inspect the work conducted under each such work permit.

Section 4.4 Acceptance, Exercise of Privileges and Renewal of Licenses.

(1) Licenses and leases may be renewed upon timely application by the licensee or lessee, for a term and on such conditions and at a fee or rent accepted by the City.

(2) Each licensee shall promptly commence to exercise its privileges thereunder. Each licensee, within six months of the effective date of the license shall file with the City Administrator a report describing the status of activities and operations authorized by its license. On each anniversary of the effective date of grant, the licensee shall file with the City Administrator a report describing status of activities and operations authorized by its license. If any such annual report fails to demonstrate occupation of the public rights-of-way substantially as authorized and the active and ongoing utilization of the subject communication facilities, the City may direct the licensee to show cause by a date certain why such license should not be deemed abandoned and terminated pursuant to Section 4.12. After a hearing, if requested in a timely manner by the licensee, the City may find that the license has been abandoned and declare it forfeited. Thereupon the City may either take possession of some or all of the licensee's facilities in the public rights-of-way or require the licensee or its bonding company to remove some or all of the licensee's facilities from the public rights-of-way and to restore the public rights-of-way to their prior condition.

(3) Each license agreement shall contain an agreement by the licensee that any communications facilities erected or maintained by it or on its behalf in the public rights-of-way are erected and maintained subject to any requirement of the City that such facilities in any general or specific area in the City be placed underground. Licensee shall come into compliance by the date any such undergrounding requirement is made applicable to existing facilities.

(4) In the event that the licensee files for bankruptcy, thereupon any license issued under this ordinance shall automatically terminate by operation of law; provided, however, that on application of the licensee or his successor to the City Administrator, the City Council may reinstate the terminated license for the balance of its original term, subject to such conditions as will in the opinion of the City adequately protect the interests of the City and the users of its public rights-of-way.

(5) Each license shall be in form a two-party agreement, and no license shall become effective without the licensee's first having filed its written and unconditional acceptance of the license under seal with the City Clerk. If such an acceptance is not filed within thirty days of the City's tender of the license, the license shall be null and void ab initio.

Section 4.5 Application for license.

(1) An application for a license under this Chapter must be on a form supplied by the City and include at a minimum the following information:

(a) The name, address, and telephone number of the applicant;

(b) The name, address, and telephone number of a responsible person whom the City may notify or contact at any time concerning the applicant's telecommunications facilities;

(c) The technical standards that the licensee proposes to follow in construction and operation of the telecommunications facilities;

(d) A general description of the telecommunications services to be provided; and

(e) Any additional information the City may require.

(f) Copies of all Missouri Public Service Commission Certificates or authorizations.

(2) To the extent that the applicant proposes to resell the services of, or lease existing facilities of, another licensee under this Chapter, the application may omit the data required under paragraph (c) of this subsection.

(3) Each application must be accompanied by a receipt from the Finance Department for the applicable processing fee, the amount of which shall be fixed from time-to-time by the City Administrator

(4) If the information in an application is incomplete or if the proposed use is inconsistent with the requirements of this Chapter, the application may be returned as unacceptable for filing.

(5) If the information provided in an application is complete and meets all the requirements of this Chapter, the City Administrator must promptly hold a public administrative hearing prior to granting or denying the application. At least fifteen (15) days' public notice must be given before the public hearing. At the public hearing, the City Administrator may accept written and oral testimony and any other material relevant to the application. If more than one application has been submitted, multiple applications may be considered in the same proceeding.

(6) In evaluating an application, the City Administrator must consider:

(a) The applicant's technical, financial, and legal qualifications to construct and operate a telecommunications system, subject to subparagraph (f), below;

(b) The nature of the proposed facilities, equipment, and services;

(c) The applicant's recent performance record of operating telecommunications facilities in other communities, if any;

(d) The ability of the applicant to operate and maintain telecommunications facilities making efficient use of the public right-of-way and justifying any inconvenience of the public attendant thereon;

(e) The effects of a grant of a license on the present and future use of the public rights-of-way, including any foreclosure of future uses of the public rights-of-way; and

(f) Such other factors as the City Administrator may deem relevant, but the City Administrator must not consider, in evaluating the application: (i) the fact that the applicant, or a person with whom the applicant has been associated, is or was a debtor in a case under the United States Bankruptcy

Code or former Bankruptcy Act; (ii) the fact that the applicant, or a person with whom the applicant has been associated, is or was insolvent before or during the applicant's or person's case under the United States Bankruptcy Code or former Bankruptcy Act before the time discharge is or was granted or denied; or (iii) the fact that the applicant, or a person with whom the applicant has been associated, has not paid a debt that is dischargeable in the applicant's or person's pending case under the United States Bankruptcy Code or discharged in the applicant's or person's prior case under the Bankruptcy Code or under the former Bankruptcy Act.

(7) Based upon the application, the written and oral testimony, and other material presented at the hearing, and any other information relevant to the application, the City Administrator must propose to grant, with or without conditions, or to deny a license application and must notify the applicant of the proposed grant or the proposed denial of the application.

(8) If the City Administrator proposes to grant a license application, the City Administrator and the applicant must agree on the terms of a license agreement within 60 days from the notice of the proposed grant specified in subsection (e) of this section. This period may be extended for good cause by the City Administrator. If agreement is not reached within 60 days and the period is not extended, the notice of proposed grant is void.

(9) The City must make the text of a proposed license agreement available to the public. A summary of the terms of a proposed license agreement must be advertised once a week for three successive weeks in one or more newspapers of general circulation in the City to give the public the opportunity to comment on the license agreement. In exercising its discretion the City may not, however, consider factors foreclosed by Section 4.5(4)(f).

(10) After complying with the requirements of this section, the City Administrator must submit a recommendation to grant a license and the proposed license agreement to the City Council or a recommendation not to grant a license. The City Council must approve or disapprove the proposed grant and agreement, based on its weighing of the record and on the applicant's ability to provide a telecommunications service or services making efficient use of the public rights-of-way and justifying any incommodation of the public attendant thereon, within 90 days from receipt of the City Administrator's recommendation; provided, however, if the City Council does not act within 90 days, the proposed grant and agreement shall be deemed to have been approved.

(11) Before the license becomes effective, however, the approved applicant must also demonstrate to the satisfaction of the City compliance with the bond, insurance, and similar provisions of the license agreement and file the acceptance provided for in Section 4.4(5).

Section 4.6 Construction.

(1) The City shall have the right to co-locate its proprietary communication facilities upon or within poles, antennae or conduits owned by a licensee provided that such proprietary communication facilities do not interfere with the licensee's own use of such poles, antennae or conduits; and provided further that such proprietary communication facilities are not used to provide telecommunications service to non-governmental entities and that the City agrees to pay compensation therefore at a fair market rate, which shall in no event exceed the compensation which either is charged or may lawfully be charged any other telecommunications service providers. Licensee shall notify the City when it enters into any agreement for use of any pole, antenna tower, or conduit located in or upon the public rights-of-way, and

provide copies of such agreements upon request. A license agreement may include a provision under which the City shall indemnify, defend and hold a licensee harmless for all claims arising out of the City's use of that licensee's poles, antenna towers, and conduits where the licensee and the City do not have a joint pole or conduit use agreement.

(2) Each licensee shall provide access to poles, antenna towers, and conduits, as available, for the installation, attachment or emplacement by others of compatible communications facilities on reasonable and non-discriminatory terms and conditions.

(3) In all sections of the service area where all cables, wires, or other like facilities of public utilities are placed underground, the licensee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology permits the franchisee to do so. Licensee shall come into compliance by the date any such undergrounding requirement is made applicable to existing facilities.

(4) Each licensee upon written notice given reasonably in advance, shall re-locate any communications facility located on or within the public rights-of-way as the City Administrator or designee may deem necessary or appropriate to facilitate the City construction, reconstruction, improvement, or repair of public streets rights-of-way, sidewalks, curbs, drains, sewers, and public improvements of any sort.

(5) A licensee shall have the authority to trim trees that overhang public rights-of-way, subject to the requirement that it obtain a work permit therefore, but shall be solely responsible for any damages caused thereby, and for the replacement of damaged trees and shrubs. A licensee shall notify abutting property owners prior to trimming trees.

Section 4.7 Annual license fee.

(1) Each Licensee under this Title IV shall remit to the City Finance Department an annual license fee equal to the greater of the per lineal foot fee established from time to time by resolution of the City Council in an annual Fee Schedule or five percent of the Licensee's gross revenues whichever amount is greater.

(2) For the purposes of this Title IV the term "Gross Revenues" includes all revenues derived directly or indirectly by the Licensee, its affiliates, subsidiaries, parents companies, Lessees, and any person in whom the Licensee has a financial interest, and revenues received by Licensee from a person with whom Licensee has a revenue-producing agreement, from the provision of telecommunications services, originated or terminated at a locations or locations in the City via the public rights-of-way, in whole or in part, which provision shall be interpreted to include all services and ancillary equipment and from the lease of telecommunications facilities emplaced, owned, or operated in the public rights-of-way for hire; provided, however, that this term shall not include taxes imposed directly upon any subscriber or user by the Federal, State, county, or other governmental unit.

(3) Gross Revenues shall also include other receipts, however denominated, in the nature of rental for facilities in the public rights-of-way used by others for communications services, including the provision of telecommunications services. The licensee may further deduct from its gross revenues, subject to the license fee, revenues received by a telecommunications reseller, as defined by this ordinance, who submits a valid Rental Certificate provided by the City Finance Department for the

applicable reporting period to the extent those revenues would otherwise be includable by the Licensee under paragraph (2) or this paragraph (3).

(4) Gross Revenues also specifically includes any revenue received, as reasonably determined from time to time by the City, through any means that is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the license granted, including the fair market value of any nonmonetary (i.e., barter) transactions between the Licensee and any person, but not less than the customary prices paid in connection with equivalent transactions. Gross Annual Revenue also includes any bad debts recovered, payments received for the lease or license to third parties of excess capacity in fiber optic cables or similar transmission facilities, and all revenue that is received by Licensee, or its subsidiaries or affiliated companies, directly or indirectly, from or in connection with the distribution of any services over the Licensee's facilities.

(5) In order to avoid duplicative license fees on the same revenues derived from subscribers or other end-customers, the licensee may exclude from the revenue base on which its annual license fee is computed all revenues derived by the licensee from charges for telecommunications facilities and services to non-facilities-based resellers of telecommunications services, to the extent that such revenues are covered by rental certificates. The aggregate amount of the rental certificates for any given period shall not exceed the amount of the revenues reported to the City Finance Department for the corresponding period. Rental certificates shall be subject to audit in the same manner as annual computations of license fees.

(6) A licensee may not offset in whole or in part the annual fee due under this ordinance by payments to the City in respect of gross receipts for telephone exchange service under Ordinance No. 87-302.

(7) For the purposes of determining the licensee's gross revenues under this Section 4.7, licensee shall provide to the City or its representative a list containing a specific description of each service to be provided under this license. These descriptions will be used in determining the licensee's annual fee obligations. Licensee shall promptly notify the City if it begins providing a new service, materially changes an existing service, or stops providing an existing service.

(8) The annual fee for telecommunications facilities used solely for transitting traffic shall be determined by the City and be set forth in the annual fee schedule . The Licensee of each such facility shall remit the annul fee within forty-five (45) days of the granting of the license or the permit for the emplacement of such facility, whichever is earlier and thereafter within forty-five (45) days after the expiration of each quarter year ending on December 31, March 31, June 30, and September 30 (or on such dates as may be provided in its license).

Section 4.8 Bonding and Security Requirements.

(1) Bond required.

No license or lease shall be valid until the licensee or lessee, shall have filed with the City Administrator or designee a bond, in acceptable form, to guarantee the licensee's or lessee's obligations under this ordinance and/or the license or lease granted hereunder.

(a) The amount of the bond shall be in the amount provided in the license or lease but in no event less than the cost of removal of the communications facilities authorized by such license or lease, and the restoration of the public rights-of-way to its original condition.

(b) Such bond shall be obtained at the sole expense of the licensee or lessee and remain in effect for the full term of the license or lease, and for twenty-four (24) months following its expiration or termination; provided, however, that the amount of such bond may be reduced upon application by the licensee or lessee after substantial completion of the excavation and construction activities, and the installation or emplacement of communications facilities authorized by the license or lease, to such amount as may be necessary or appropriate to guarantee the performance of the licensee's or lessee's future obligations under this ordinance and/or the license or lease granted hereunder, as may be finally determined by the City Administrator or designee, but in no event less than the cost of removal of the communications facilities authorized by such license or lease, and the restoration of the public rights-of-way to its original condition.

(c) The licensee or lessee and its surety or issuer shall be jointly and severally liable under the terms of the bond for any damages or loss suffered by the City as a result of the licensee's or lessee's nonperformance, including the full amount of any compensation, indemnification or cost of removal of any property of the licensee or lessee in the event of default, and a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond. The bond shall provide for not less than sixty (60) days' prior written notice to the City prior to cancellation, expiration or material alteration of its terms.

(d) Neither the filing of a bond with the City nor the receipt of any damages recovered by the City thereunder shall be construed to excuse the faithful performance or limit the liability of the licensee under the terms of its license or lease for damages, either to the full amount of the bond or otherwise. The rights of the City under any bond or other security fund are in addition to all other rights of the City, whether reserved by this ordinance or authorized by other law or the licensee or lessee, and no action, proceeding or exercise of a right with respect to such security fund or bond will affect any other right the City may have.

(e) Procedures. From time-to-time the City Administrator shall provide for the procedures to be followed with respect to drawing upon the security fund and bond.

(2) Security deposit.

A license or lease may provide that, prior to the license's or lease's becoming effective, the licensee or lessee shall post with the City a cash security deposit to be used as a security fund to ensure the licensee's or lessee's faithful performance of and compliance with all provisions of this ordinance, the license or lease and other applicable law and compliance with all orders, permits and directions of the City and the payment by the licensee or lessee of any claims, liens, fees or taxes due the City which arise by reason of the construction, operation or maintenance of the communications facility.

(3) Qualifications of sureties.

All bonds shall be issued by a bonding company that has attained, and shall maintain for the duration of said bond, a rating from A.M. Best's or Standard and Poor's of not less than "A" as evidence of its solvency. The bond shall be accompanied by a certificate from the Secretary of State of Missouri and a certificate from the Missouri Department of Insurance, which authorize the bonding company to conduct business within Missouri. The bonding company must have attained, and shall maintain for the duration of said bond a rating from A.M. Best's or Standard and Poor's of not less than "A" as evidence of its

solvency. A certificate from the original issuing company stating that the bond is in effect shall also be submitted.

(4) Remedies Cumulative.

All remedies under this ordinance and the license agreement or lease are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a licensee or lessee of its obligations to comply with its or license. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity.

(5) Relation to Insurance and Indemnity Requirements.

Recovery by the City of any amounts under insurance, the bond or security fund or otherwise does not limit a licensee's duty to indemnify the City in any way; nor shall such recovery relieve a licensee of its obligations under a license, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

TITLE V OTHER COMMUNICATIONS FACILITIES

Section 5.1 Applicability.

(1) This title applies to the erection, emplacement, construction or maintenance of communications facilities upon, across, beneath, or over any public right-of-way other than for the provision of telecommunications or cable services within the City under license and lease;

(2) This title does not apply to communications circuits and lines installed in conjunction with the facilities of a public utility, where those circuits and lines are utilized solely for communications for and in connection with the internal conduct of the utility's own affairs.

Section 5.2 Private communications lines.

(1) Upon approval by the City Administrator of an application in proper form, the City shall issue a license to any person demonstrating a need in the course of its business to emplace or operate private communications lines in the public rights-of-way to facilitate internal communications between or among its places of business. Such license shall not authorize the provision for hire of telecommunications services or communications facilities.

(2) With respect to such private communications lines, the City Administrator may waive or modify the provisions of Sections 4.2 -4.7 to fit the individual circumstances and to adequately protect the interests of the City and of users of its public rights-of-way. The annual fee for such private communications license shall be set by the City Council Resolution.

Section 5.3 Communications Facilities for Hire.

The provisions of Title IV shall apply to the construction, emplacement, and maintenance of communications facilities in the public rights-of-way for rental, however denominated, to others, insofar

as appropriate. In issuing licenses to owners and operators of such communications facilities in the public rights-of-way, the City Administrator may waive any of the provisions of Title IV pertaining to the provision of services that are not appropriate to the ownership and operation of facilities by an owner or operator to the extent he is not providing telecommunications services therewith. The annual fee shall be determined by the City Council Resolution.

TITLE VI EFFECTIVE DATE; TRANSITIONAL PROVISIONS

Section 6.1 Effective date.

This ordinance shall be in full force and effect from and after its passage and approval by the City Council and publication as required by law.

Section 6.2 Transitional provisions for existing facilities.

(1) The operator of any existing facility, the operation of which is required to be licensed under this ordinance, shall have three months from the effective date of this ordinance to file one or more applications for a license under this ordinance. Any operator filing such an application shall not be subject to a penalty under Section 1.11 hereof for failure to have such a license for that period during which said application remains pending.

(2) Any person holding an outstanding license or franchise from the City to provide services may continue to operate under the existing license or franchise to the conclusion of its present term (but not any renewal or extension thereof); provided, however, that such licensee may elect at any time to apply for a superseding license under this ordinance.

Section 2. Ordinance No. 95-896 is hereby repealed; provided, however, that any action or liability thereunder shall not lapse but shall continue unabated; provided further, that any person holding a cable franchise under Ordinance No. 95-896 shall now be deemed to hold it under Title II of this Ordinance.

PASSED BY THE CITY COUNCIL THIS 7TH DAY OF DECEMBER, 2000.

MAYOR/PRESIDING OFFICER

APPROVED BY THE MAYOR THIS _____ DAY OF DECEMBER, 2000.

MAYOR

ATTEST:

CITY CLERK