

CHAPTER 9
CABLE TELEVISION

ARTICLE I. IN GENERAL	902
<i>Sec. 9-1. Statement of intent and purpose.</i>	902
<i>Sec. 9-2. Franchise processing cost.</i>	902
<i>Sec. 9-3. Franchise agreement.</i>	902
<i>Sec. 9-4 - 9-9. Reserved.</i>	902
ARTICLE II. SHORT TITLE.	903
ARTICLE III. DEFINITIONS.	904
ARTICLE IV. GRANT OF AUTHORITY AND GENERAL PROVISIONS.	906
<i>Sec. 9-10. Grant of franchise.</i>	906
<i>Sec. 9-11. Authority for use of streets.</i>	906
<i>Sec. 9-12. Franchise term.</i>	906
<i>Sec. 9-13. Franchise non-exclusive.</i>	906
<i>Sec. 9-14. Cable communications franchise required.</i>	907
<i>Sec. 9-15. Police powers.</i>	907
<i>Secs. 9-16 - 9-30. Reserved.</i>	907
ARTICLE V. CONSTRUCTION PROVISIONS.	908
<i>Sec. 9-31. Permits.</i>	908
<i>Sec. 9-32. Construction codes.</i>	908
<i>Sec. 9-33. Reservation of street rights.</i>	908
<i>Sec. 9-34. Repair of streets and property.</i>	908
<i>Sec. 9-35. Undergrounding of cable.</i>	909
<i>Sec. 9-36. Trimming of trees.</i>	909
<i>Sec. 9-37. Street vacation or abandonment.</i>	909
<i>Sec. 9-38. Movement of facilities.</i>	909
<i>Sec. 9-39. Erection of poles prohibited.</i>	909
<i>Sec. 9-40. Non-compliance with construction provisions.</i>	909
<i>Secs. 9-41 - 9-49. Reserved.</i>	910
ARTICLE VI. GENERAL ADMINISTRATION.	911
<i>Sec. 9-50. Franchise fee and annual reports.</i>	911
<i>Sec. 9-51. Maintenance and complaints.</i>	911
<i>Sec. 9-52. Rates and other charges.</i>	912
<i>Sec. 9-54. Information to subscribers.</i>	912
<i>Sec. 9-55. Formal complaint procedure.</i>	912
<i>Secs. 9-56 - 9-70. Reserved.</i>	912
ARTICLE VII. GENERAL FINANCIAL AND INSURANCE PROVISIONS.	913
<i>Sec. 9-71. Letter of credit.</i>	913
<i>Sec. 9-72. Liability insurance and indemnification.</i>	913
<i>Sec. 9-73. Duty to grantee.</i>	913
<i>Secs. 9-74 - 9-85. Reserved.</i>	913
ARTICLE VIII. REVOCATION, ABANDONMENT, PURCHASE AND REMOVAL OF THE SYSTEM.	914
<i>Sec. 9-86. City's right to revoke.</i>	914
<i>Sec. 9-87. Procedures.</i>	914
<i>Sec. 9-88. Removal of system.</i>	915
<i>Sec. 9-89. Purchase.</i>	915
<i>Sec. 9-90. Abandonment.</i>	915
<i>Sec. 9-91 - 9-100. Reserved.</i>	915
ARTICLE IX. RIGHTS OF INDIVIDUALS PROTECTED.	916
<i>Sec. 9-101. Monitoring subscriber viewing.</i>	916

Rev. 9/30/2009

<i>Sec. 9-102. Sale of subscriber lists prohibited.</i>	916
<i>Sec. 9-103. Protection of system integrity.</i>	916
<i>Sec. 9-104. Discrimination prohibited.</i>	916
<i>Sec. 9-105. Program selection.</i>	917
<i>Secs. 9-106 - 9-115. Reserved.</i>	917
ARTICLE X. FORECLOSURE AND RECEIVERSHIP.	918
<i>Sec. 9-116. Foreclosure.</i>	918
<i>Sec. 9-117. Receivership.</i>	918
<i>Secs. 9-118 - 9-130. Reserved.</i>	918
ARTICLE XI. MISCELLANEOUS PROVISIONS.	919
<i>Sec. 9-131. Compliance with laws.</i>	919
<i>Sec. 9-132. Sale or transfer of franchise.</i>	919
<i>Sec. 9-133. Franchise renewal.</i>	919
<i>Sec. 9-134. Administration of the franchise.</i>	919
<i>Sec. 9-135. Grantee operating procedures.</i>	919
<i>Sec. 9-136. Prohibited acts.</i>	919
<i>Sec. 9-137. Continuity of service.</i>	920
<i>Sec. 9-139. No recourse against the city.</i>	920
<i>Sec. 9-140. Separability.</i>	920
<i>Secs. 9-141 - 9-150. Reserved.</i>	921
ARTICLE XII. FRANCHISE PROCEDURE.	922
<i>Sec. 9-151. Request for franchise.</i>	922
<i>Sec. 9-152. Grant of initial franchise.</i>	922
<i>Secs. 9-153 - 9-165. Reserved.</i>	923

ARTICLE I. IN GENERAL

Sec. 9-1. Statement of intent and purpose.

The City intends to bring about the continued development and operation of cable communications services for the City. Such a development can contribute significantly to the communication needs and desires of citizens of the City. Further, by the continued development and operation of a System, City may help achieve better utilization and improvement of public services.
(Ord. No. 10833, 5-18-87; Ord. No. 10994, 2-15-88)

Sec. 9-2. Franchise processing cost.

Any applicant for an initial franchise to own, operate, and maintain a system within the City shall be required to reimburse City for all costs incurred, including attorneys' fees in soliciting and evaluating the application, and processing the franchise award.

Sec. 9-3. Franchise agreement.

City, by and through its Mayor and City Clerk, and grantee are hereby authorized, at the time of acceptance, to enter into an Agreement, consistent with this Chapter, governing the relationship between City and grantee; providing for regulation and use of system; and prescribing liquidated damages for the violation of its provisions.

Sec. 9-4 - 9-9. Reserved.

ARTICLE II. SHORT TITLE.

This Chapter shall be known and cited as the "City of Jefferson, Missouri, Cable Communications Chapter," hereinafter in this document referred to as "Chapter."

ARTICLE III. DEFINITIONS.

For purposes of this Chapter the following terms, phrases, words and their derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given the meaning set forth in 47 U.S.C. §§ 521 *et seq.* or Chapter 47 of the Code of Federal Regulations, or if not defined therein, their common and ordinary meaning.

Basic Service. Any service tier or level which includes the retransmission of local television broadcast signals or such other definition as may be adopted by federal law.

Channel. A portion of the electromagnetic frequency spectrum which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals.

Chapter. This Chapter of the City of Jefferson, Missouri, and all amendments thereto.

City. The City of Jefferson and all of the territory within its present and future boundaries.

City Council. The elected governing body of the City of Jefferson, Missouri.

Class IV Cable Communications Channel. A signaling path provided by System to transmit signals of any type from a subscriber terminal to another point in the System.

Commission. The Cable Quality Commission.

Connection. The attachment of the drop to the first radio, television set, VCR or computer terminal of the subscriber.

Converter. An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all appropriate subscriber signals included in the service delivered at designated converter dial locations.

Days. Unless otherwise specified, all references to a number of days in this agreement shall mean calendar days.

Density Per Cable Mile. Shall be computed by dividing the number of residences and platted lots in the area by the length, in miles or fraction thereof, of the cable required to serve the residences and platted lots excluding drops.

Drop. The cable, in some cases including converter, that connects the computer terminal, or the antenna terminal on the subscriber's radio, television set or VCR to the nearest feeder cable of the system.

FCC. The Federal Communications Commission or a designated representative.

Franchise. The rights and obligations extended by City to grantee to own, operate and maintain a System within the City of Jefferson, Missouri, and manifested by the following:

- A. This Chapter; and
- B. The Ordinance authorizing the grant of a Franchise to any person, firm or corporation authorized to do business in the State of Missouri; and

- C. Franchise Agreement entered into between City and grantee based on the authority and grant of a cable communications franchise pursuant to this Chapter.

Franchise Administrator. The City Administrator of the City of Jefferson, Missouri, or his designee.

Franchise Agreement. An agreement entitled "Franchise Agreement" entered into between City and grantee which is enforceable by City and grantee and which sets forth rights and obligations between City and grantee arising out of the Franchise.

Grantee. A person that has been granted a franchise by the City in accordance with this Chapter.

Gross Revenues. Any revenue derived directly or indirectly by Grantee from or in connection with the operation of the System in the City of Jefferson, Missouri, including but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, and advertising revenues. This term does not include any taxes on services furnished by Grantee and imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by Grantee on behalf of said governmental unit.¹

Initial Service Area. The area served by the Grantee on the date a Franchise Agreement is executed.

Person. Any corporation, partnership, proprietorship, individual or organization authorized to do business in the State of Missouri, or any natural person.

Public Property. Any real property owned by City or any other governmental unit, other than a street.

Resident. Any person residing in the City as otherwise defined by applicable law.

Street. The surface of and the space above and below any public street, road, cartway, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by City which shall, within its proper use and meaning in the sole opinion of City, entitle grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to System.

Subscriber. Any person or entity who legally receives any service provided by Grantee by means of or in connection with the System with the Grantee's permission, as well as the City in its capacity as a recipient of such service.

System. A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the City, but the term System 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 only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-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 Cable Communications Policy Act of 1984, except that such facility shall be considered a System to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utilities system.

Without Service. A material and substantial degradation throughout the basic service tier or in one (1) or more premium services.

ARTICLE IV. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

Sec. 9-10. Grant of franchise.

Franchises shall be granted only pursuant to the terms and conditions contained in this Chapter and, except as expressly provided otherwise, shall be subordinate to all applicable provisions of local, state and federal laws, rules and regulations.

Sec. 9-11. Authority for use of streets.

A. For the purposes of operating and maintaining a System in City, the Franchise shall provide grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, across and along the streets within City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

B. Prior to construction or alteration, grantee shall in each case file plans with all appropriate City agencies and utility companies and receive written approval of such plans from all affected agencies & companies. Grantee shall provide a monthly progress report to Commission through the completion of construction or alteration. For purposes of this Section, construction or alteration shall refer to major improvements or changes to grantee's system which involve one or more of the following:

1. Work over, under or upon any street;
2. Work requiring digging, trenching or other disturbance of the streets, public rights of way or easements; or
3. Changes or additions to System components including, but not limited to, antennae, towers, earth stations, satellite receivers, microwave receivers, broadcasters and repeaters, and related fixtures and appurtenances serving the City.

C. Grantee shall construct and maintain the System so as not to interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to grantee. Grantee shall notify by reasonable written means all residents affected by proposed construction prior to the commencement of that work.

D. Notwithstanding the above grant to use streets, no street shall be used by grantee if City, in its sole discretion, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated or is presently used.

Sec. 9-12. Franchise term.

A Franchise shall commence upon the effective date of its adoption by the City Council and shall expire seven (7) years¹ thereafter, unless expressly provided otherwise or renewed or terminated sooner as provided by this Chapter.

Sec. 9-13. Franchise non-exclusive.

A. Any Franchise granted in accordance with this Chapter is non-exclusive. City specifically reserves the right to grant, at any time, additional franchises for a System as it deems appropriate. City also reserves the right to grant one (1) or more franchises for the provision of specifically defined services, including but not limited to, institutional communications services and interactive residential services.

B. Grantees of franchises granted in accordance with this Chapter may be required to make available at least one (1) channel for public, educational and governmental access. When not in use such channel may be used by grantee for other purposes or programming.

C. Within six (6) months after the grant of an additional franchise, the City and the holders of franchises granted under this Chapter shall meet and discuss an interconnection of the facilities of all grantees for the purposes of cablecasting a common signal for the purposes of government access and use. Within two (2) years of the initial meeting of the City and all grantees, the plan for interconnection shall be submitted to the City Council for approval and adoption. The plan for interconnection shall include, but need not be limited to, a technical description of the proposed interconnection, a timetable for implementation, guidelines for use of the interconnection, and allowance for interconnection with future grantees. The costs of the construction and operation of the interconnection shall be shared equitably by all grantees.

D. Grantee shall provide one (1) cable drop to any government or school building which the City requests for the purpose of providing basic service. No installation or monthly charge shall be made for this service. If more than one (1) drop is requested, it shall be provided at the cost of materials and at no monthly charge. The System shall be capable of providing live broadcasts from any city building, as designated by Grantor, at the time public, educational, governmental access programming, if established, becomes operative.

Sec. 9-14. Cable communications franchise required.

No System shall be allowed to occupy the public right of way or use the streets or other public property of City or be allowed to operate within the City without a cable communications franchise.

Sec. 9-15. Police powers.

Grantee's rights hereunder are subject to the police power of City to adopt and enforce general ordinances necessary to the safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by City pursuant to that power. Any conflict between the provisions of this Franchise and this Chapter shall be resolved in favor of the Franchise, subject to the lawful exercise of City's police powers.

Secs. 9-16 - 9-30. Reserved.

ARTICLE V. CONSTRUCTION PROVISIONS.

Sec. 9-31. Permits.

A. Grantee shall obtain a permit from the Department of Public Works before commencing construction or alteration of System, including the opening or disturbance of any street, sidewalk, driveway or public place. Any and all streets which are disturbed or damaged during the construction, alteration, operation, maintenance or reconstruction of System shall be promptly repaired by grantee, at its expense, and to the satisfaction of City.

B. Failure of grantee to obtain a permit or failure of the grantee to meet the conditions of any applicable city permit with respect to disturbance of a street shall be both a violation of this Chapter and the appropriate permit ordinance.

Sec. 9-32. Construction codes.

All wires, conduits, cable and other property and facilities of grantee shall be located, constructed, installed and maintained in compliance with applicable codes. Grantee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the streets and public places of the City or endanger the lives or property of any person. In the event of such interference, City may require the removal of grantee's lines, cables and appurtenances from the street or property in question. All costs and expenses of the removal shall be borne by the grantee. City shall have the right to inspect all construction or installation work performed subject to the provisions of the Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and pertinent provisions of law and ordinances that are applicable.

Sec. 9-33. Reservation of street rights.

A. Nothing in the Franchise shall be construed to prevent City from constructing sewers, grading, paving, repairing or altering any street, or laying down, repairing or removing water mains, or constructing or establishing any other public work. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of grantee.

B. Except in an emergency, if any such property of grantee shall interfere with the construction or repair of any street or improvement, thirty (30) days' written notice shall be given to grantee by City and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by grantee in such manner as shall be directed by City so that the same shall not interfere with the said public work of City, and such removal or replacement shall be at the expense of grantee. In case of emergency, grantee shall respond immediately to a request to remove or replace such facilities, and shall do so at its own expense.

Sec. 9-34. Repair of streets and property.

In Constructing, operating, maintaining and testing System, grantee shall refill and compact, at its own expense, any excavation that shall be made and shall leave all streets and property, whether it be public or private, in as good a condition as that prevailing prior to said work, and without affecting, altering or disturbing, in any way, electric, telephone or utility cables, wires or attachments. The City shall have the right to inspect and approve the condition of all streets and property after said work.

Sec. 9-35. Undergrounding of cable.

The placement of cables underground is encouraged. In any event, cables passing under any street shall be installed in underground conduit. Previously installed aerial cable shall be placed underground in concert with all other utilities, when all other utilities may convert from aerial to underground construction and Grantee shall place cable underground in newly platted areas where all other utilities are underground as soon as practicable as provided in the Franchise Agreement. When cable is undergrounded, it shall be buried to a depth of at least twenty-four (24) inches on City right-of-way and to a depth of at least twelve (12) inches on private property and shall be adequately covered and compacted upon completion and shall be subject to inspection and approval by the City. City shall notify Grantee of all pending changes from aerial to underground utility installations.

Sec. 9-36. Trimming of trees.

Grantee shall have the authority to trim trees upon and overhanging streets, berms, alleys, sidewalks and public places of City so as to prevent the branches of such trees from coming in contact with the wires and cables of grantee. Grantee shall give a minimum of forty-eight (48) hours advance notice to affected residents and City. Upon request of City, all trimming shall be done with the approval and under the supervision and direction of City and shall be in accordance with generally accepted pruning practice.

Sec. 9-37. Street vacation or abandonment.

In the event any street or portion thereof used by Grantee shall be vacated by City or the use thereof discontinued by grantee during the term of the franchise, grantee shall forthwith remove its facilities therefrom unless specifically permitted to continue the same, and on the removal thereof restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be required by City.

Sec. 9-38. Movement of facilities.

In the event it is necessary temporarily to move or remove any of grantee's wires, cables, poles, or other facilities placed pursuant to the Franchise, in order lawfully to move a large object, building or other structure over the streets of City, grantee, upon notice of not less than ten (10) days, shall move, at the expense of the person requesting the temporary removal, such facilities as may be required to facilitate such movements. Grantee reserves the right to require payment in advance for such moving services. Additionally, any service disruption sections of the Franchise Agreement shall not apply in the event that the removal of grantee's wires, cables, poles or other facilities results in temporary service disruptions. However, if the removal will result in a temporary service interruption of more than (2) hours, grantee shall give notice to subscribers by reasonable written means that there will be a service interruption.

Sec. 9-39. Erection of poles prohibited.

Grantee shall not erect, for any reason, any pole on or along any street in an existing aerial utility system. If additional poles in an existing aerial route are required, grantee shall arrange with the applicable utility for the installation of the needed poles. Any such additional poles shall require the advance written approval of the Commission.

Sec. 9-40. Non-compliance with construction provisions.

Rev. 9/30/2009

In the event of failure, neglect or refusal of grantee to comply with the provisions of this Article, after an inspection and ten (10) days notice by City directing compliance, the City may do or cause to be done any work required to restore or repair any street or property, to alleviate interference with the use of any street or property or other public work, to underground cable, to move or remove facilities of the grantee or to perform any other work deemed necessary by City due to the failure, neglect or refusal of the grantee. All costs and expenses of the work performed by City shall be paid by grantee. Costs and expenses charged against the grantee pursuant to this section shall be in addition to any penalties imposed by City or any other remedies available to City under the provisions of this Chapter or the Franchise Agreement.

Secs. 9-41 - 9-49. Reserved.

ARTICLE VI. GENERAL ADMINISTRATION.

Sec. 9-50. Franchise fee and annual reports.

City shall have the authority to collect a franchise fee and to audit grantee's accounting and financial records upon reasonable notice as set forth in the Franchise Agreement. Grantee shall file with City a certified audited report of gross revenue and other information as set forth in the Franchise Agreement on at least an annual basis.

Sec. 9-51. Maintenance and complaints.

A. A toll-free or collect telephone number for the reception of complaints shall be provided to subscribers, and grantee shall maintain a repair service capable of responding to subscriber complaints or requests for repairs, maintenance, adjustments or installations within twenty-four (24) hours after receipt of the complaint or request. Grantee shall investigate and resolve all complaints regarding quality of service, equipment malfunction, billing disputes and other matters pursuant to the procedure set forth in the Franchise Agreement. If the grantee is unable to address the complaint within twenty-four (24) hours, grantee shall notify in writing subscriber and Commission the reason or reasons for the delay and when service will be restored or when the complaint will be resolved.

B. Grantee shall bear the costs included in resolving the complaint or making such repairs, maintenance, adjustments or installations unless such repairs are necessary due to neglect or abuse of the subscriber. All costs for repairs necessary due to neglect or abuse of subscriber shall be borne by the subscriber. Grantee may charge according to its actual cost for time and material.

C. City after first providing grantee with the opportunity to provide the information or conduct appropriate test may cause the telephone Grantee serving grantee to test the capacity of telephone lines based on volume of calls that may be received by the grantee's business office in order to determine the availability of adequate telephone lines and personnel to serve incoming calls. The test shall include a reading of the percentage of busy signals received by persons calling the customer service line and of the answering time of Grantee's customer service lines. Grantee shall use its best efforts to ensure that during normal day to day operations not more than three percent (3%) of all callers receive a busy signal and that the customer service line answer calls within thirty (30) seconds. Any disputes between City and grantee over the provisions in this paragraph shall be resolved by the Commission.

D. The grantee shall submit to the Franchise Administrator on or before the tenth day of each month the service complaint log for the preceding month. The service log shall a summary of complaints received detailing the nature of the complaints or requests, the dates on which the complaints or requests were received, the dates on which the complaints or requests were resolved and the date on which confirmation that the complaints or requests were resolved was made.

Sec. 9-52. Rates and other charges.

The City reserves the right to regulate service and equipment rates to the maximum degree permitted by applicable state and federal law. Each Grantee shall comply with all such regulation provisions that the City may adopt, and all Federal laws regarding rates.

Sec. 9-53 repealed by Ord. 13159, 1-16-2001

Sec. 9-54. Information to subscribers.

The grantee shall furnish each subscriber at the time service is requested, written instructions that clearly set forth information and procedures for making inquiries or complaints. The information shall include, but not be limited to, the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed.

Sec. 9-55. Formal complaint procedure.

City shall ensure that all subscribers and members of the general public have recourse to a public hearing before the Commission regarding any complaints that have not been resolved to the satisfaction of the person initiating the complaint. Grantee, a subscriber or member of the general public may file an application with the Commission requesting a hearing at the next regular meeting of the Commission provided that ten (10) days notice is given to all parties in interest. The Commission shall resolve the complaint after all interested parties have presented their positions.

Secs. 9-56 - 9-70. Reserved.

ARTICLE VII. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

Sec. 9-71. Letter of credit.

At the time the Franchise is granted and at all times thereafter until grantee has completed all of its obligations with City, grantee shall furnish a letter of credit or cash security fund approved by City in such amount as City deems to be adequate compensation for damages resulting from grantee's nonperformance. City may, from year to year, in its sole discretion, reduce the amount of the letter of credit or security fund. The amount of the letter of credit or security fund shall be as set forth in the Franchise Agreement.

Sec. 9-72. Liability insurance and indemnification.

Grantee shall indemnify, defend and hold harmless City at all times during the term of the Franchise, and maintain throughout the term of the Franchise, liability insurance in such amount as City may require insuring both City and grantee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the Franchise. Grantee shall initially maintain insurance in such reasonable amounts as set forth in the Franchise Agreement.

Sec. 9-73. Duty to grantee.

Nothing contained in the Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring grantee's facilities while performing any work connected with grading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

Secs. 9-74 - 9-85. Reserved.

ARTICLE VIII. REVOCATION, ABANDONMENT, PURCHASE AND REMOVAL OF THE SYSTEM.

Sec. 9-86. City's right to revoke.

City reserves the right to terminate and cancel the Franchise and all rights and privileges of the Franchise in the event of the occurrence of any of the following:

- A. Grantee substantially or repeatedly violates any material provision of this Chapter, Franchise, or Franchise Agreement;
- B. Grantee practices any fraud, deceit, or unlawful coercion upon City;
- C. Grantee unlawfully threatens or coerces subscribers, city officials or employees or any other person in regard to the provision or disconnection of cable service;
- D. Grantee becomes insolvent, unable or unwilling to pay its debts or any fees, charges or any sum of money owed to City or any other person;
- E. Grantee is adjudged bankrupt;
- F. Grantee materially misrepresents a material fact in the application for, negotiation of or administration of the Franchise or Franchise Agreement, or
- G. Upon the conviction of any director, officer, employee or agent of grantee of the offense of bribery, fraud or extortion in connection with or resulting from the awarding of the Franchise or Franchise Agreement.

Nothing in the Franchise shall preclude termination of the Franchise at any time by mutual agreement of both City and grantee.

Sec. 9-87. Procedures.

- A. City shall provide grantee with a written notice of the cause for termination and its intention to terminate the Franchise and shall allow the grantee a minimum of thirty (30) days after service of the notice in which to correct the violation.
- B. Grantee shall be provided with an opportunity to be heard at a public hearing before Commission prior to the termination of the Franchise. Commission shall hear any persons interested therein, and shall determine, in its discretion, whether there was a failure, refusal or neglect by the grantee and whether it was without just cause.
- C. If such failure, refusal, or neglect by grantee to comply within such time was with just cause, City shall direct grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
- D. If City shall determine such failure, refusal, or neglect by grantee was without just cause, then City may, by resolution, declare that the franchise of grantee shall be terminated.

Sec. 9-88. Removal of system.

Upon termination, forfeiture or expiration of the Franchise, if not renewed, grantee shall remove its cables, wires and appliances from the streets and other public and private property within City if City so requests, and City shall follow procedures set forth in the Franchise Agreement in the event grantee fails to remove its cable, wires, and appliances from the streets and other public and private property within City.

Sec. 9-89. Purchase.

When System or the Franchise is offered for sale or at the termination of the Franchise, City shall have the right of first refusal of any bona fide offer to purchase System in the manner set forth in the Franchise Agreement. Grantee shall notify City of its intent to accept a bona fide offer, and City shall have thirty (30) business days to exercise its right on the same terms and conditions as the bona fide offer.

Sec. 9-90. Abandonment.

Grantee may not abandon any cable communications system or any portion thereof without having given six (6) months prior written notice to City. Further, grantee may not abandon any cable communications system or any portion thereof without compensating City for damages resulting from the abandonment. The amount of damages resulting from abandonment shall be determined by City.

Sec. 9-91 - 9-100. Reserved.

ARTICLE IX. RIGHTS OF INDIVIDUALS PROTECTED.

Sec. 9-101. Monitoring subscriber viewing.

Except as necessary to render a cable service or other service to the subscriber or to test the unauthorized reception of service, no Grantee may use the System to collect personally identifiable information regarding individual subscriber viewing patterns or practices without the express written or electronic permission of the subscriber. No penalty shall be invoked for the subscriber's failure to provide such permission. Such permission shall be revocable at any time by the subscriber upon written notice to grantee without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for this purpose.

Sec. 9-102. Sale of subscriber lists prohibited.

Except to the extent permitted under 47 U.S.C. §551, no information or data obtained by monitoring transmission of a signal from a subscriber terminal, or by any other means, including but not limited to, lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers shall be sold or otherwise made available to any party other than to grantee and its employees for internal business use, or agents only in connection with grantee's business, and also to the subscriber who is a subject of that information, unless grantee has received specific written authorization from subscriber to make such data available. Request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission with full knowledge of its provision. The sale of any subscriber list, however generated, other than as provided in this Chapter is also prohibited.

Sec. 9-103. Protection of system integrity.

Written permission from the subscriber shall not be required for the conducting of system-wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billings. Confidentiality of such information shall be subject to the provision set forth above in section 9-102.

Sec. 9-104. Discrimination prohibited.

A. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Chapter by reference.

B. Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC and any other federal, state and local laws and regulations, as amended from time to time.

Sec. 9-105. Program selection.

A. Subject to Federal Law, all programs of broadcasting stations carried by the grantee shall be carried in their entirety as received, with announcements and advertisements, and without additions. Grantee shall provide to its subscribers the stereo broadcast signals of broadcasting stations and channels offering stereo broadcasts.

B. Upon the request of a subscriber, a cable operator shall provide, by sale or lease, a device by which the subscriber can block the video of a particular channel during periods selected by that subscriber.

C. In the event that provisions of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984), or any other law or amendment regulating cable communications is invalidated, requirements for specific programming services may be established by the City.

D. In the event that City obtains waivers from the FCC relating to the existence of a natural cable television monopoly within the City of Jefferson, Missouri, requirements for specific programming services may be established by the City.

Secs. 9-106 - 9-115. Reserved.

ARTICLE X. FORECLOSURE AND RECEIVERSHIP.

Sec. 9-116. Foreclosure.

Upon the foreclosure or other judicial sale of all or a part of System, or upon the termination of any lease covering all or part of system, grantee shall notify City of such fact and such notification shall be treated as a notification that a change in control of grantee has taken place, and the provisions of the Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

Sec. 9-117. Receivership.

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

1. Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of the Franchise and remedied all defaults thereunder; and
2. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the Franchise.

B. In the case of a foreclosure or other judicial sale of the plant, property and equipment of the grantee, or any part thereof, City may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the Franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

1. City shall have approved the transfer of this Franchise; and
2. Such successful bidder shall have covenanted and agreed with City to assume and be bound by all the terms and conditions of this Franchise.

Secs. 9-118 - 9-130. Reserved.

ARTICLE XI. MISCELLANEOUS PROVISIONS.

Sec. 9-131. Compliance with laws.

Grantee shall conform with all the state laws and rules regarding cable communications pursuant to the effective date of such laws and rules. Grantee shall conform with all federal laws and regulations regarding cable communications as they become effective. Grantee shall also conform with all City ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established pursuant to the City's police powers during the entire term of the Franchise.

Sec. 9-132. Sale or transfer of franchise.

The sale or transfer of the Franchise or sale or transfer of stock so as to create a new controlling interest is prohibited, except with the approval of City, which approval shall not be unreasonably withheld, and such sale or transfer is completed as set forth in the Franchise Agreement.

Sec. 9-133. Franchise renewal.

Any Franchise granted in accordance with this Chapter may be renewed by City upon application of grantee and in accordance with the then applicable City, State and Federal law.

Sec. 9-134. Administration of the franchise.

A. The City Administrator of the City, or his designee, shall be responsible for the continued administration of the Franchise.

B. City shall have continuing regulatory jurisdiction and supervision over system and grantee's operation under the Franchise as provided under applicable law.

C. Grantee shall construct, operate and maintain the System subject to the supervision of the City and in strict compliance with all laws, ordinances, departmental rules and regulations affecting System.

D. System and all parts thereof shall be subject to the right of periodic inspection by City.

Sec. 9-135. Grantee operating procedures.

Grantee shall establish such rules, regulations, operating procedures, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the grantee to exercise its rights and perform its obligations under the Franchise and to assure uninterrupted service to all subscribers. Such rules, regulations, operating procedures, terms and conditions shall not be in conflict with the provisions of this Chapter or applicable local, state and federal laws, rules and regulations. All rules, regulations, operating procedures, terms conditions shall be available upon request to the Commission for its review.

Sec. 9-136. Prohibited acts.

Exclusive of contractual damages or other rights in law or equity, a violation of any provision of this Chapter is enforceable by City, and punishable as provided in Section 1-13 of the Code of the City of Jefferson, Missouri, unless a different penalty is provided by this Chapter.

A. From and after the effective date of this Chapter, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in the City any television signals or radio signals by means of a System unless a franchise therefor has first been obtained pursuant to the provisions of this Chapter, and unless such franchise is in full force and effect.

B. From and after the effective date of this Chapter, it shall be unlawful for any person to construct, install, establish, operate or maintain within any public street in City, or within any other public property of City, or within any privately owned area within City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by City, any equipment or facilities for distributing any television signals or radio signals through a System, unless a franchise authorizing such use of such street or property or area has first been obtained and unless such franchise is in full force and effect.

C. It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised System within City for the purpose of taking or receiving or enabling himself or others to take or receive any television signal, radio signal, picture, program, sound, or data transmission, without payment to the owner of said System.

D. It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs, sound, or data transmissions.

Sec. 9-137. Continuity of service.

Upon either the expiration or revocation of a franchise, City may require grantee to continue to operate System for an extended period of time not to exceed six (6) months from the date of such expiration or revocation unless extended by City resolution. Grantee shall, as trustee for its successor in interest, continue to operate System under the terms and conditions of this Chapter and the Franchise Agreement, to provide the regular subscriber service and any and all of the services that may be provided at that time, and to collect all revenues due and pay all fees and charges due as a result of such operation. In the event grantee does not so operate the System, City may take such steps as it, in its sole discretion, deems necessary to assure continued service to the subscribers.

Sec. 9-138 repealed by Ord. 13159, 1-16-2001

Sec. 9-139. No recourse against the city.

Except as provided in the franchise, grantee shall have no recourse whatsoever against City or its officials, agents or employees for any monetary loss, costs, expense or damage arising out of any provision or requirement of the Franchise or because of the enforcement of the Franchise. Nothing in the foregoing shall affect a Grantee's right to seek injunctive, declaratory or other non-monetary relief with respect to the City.

Sec. 9-140. Separability.

If any provision of this Chapter is held by any court or by any federal, state, or county agency of competent jurisdiction to be invalid as conflicting with any federal, state, or county law, rule or regulation, said provision shall

Rev. 9/30/2009

be considered a separate, distinct and independent part of this Chapter and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof or thereof which has been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on City and Grantee, provided that the City shall give Grantee thirty (30) days written notice of such change before requiring compliance with said provisions.

Secs. 9-141 - 9-150. Reserved.

ARTICLE XII. FRANCHISE PROCEDURE.

Sec. 9-151. Request for franchise.

A. Any person desiring an initial franchise to construct and operate a System shall request, in writing, a Franchise for the System from the City Council.¹ Such request shall include:

1. Identification of applicant and ownership information and qualifications and proof of authorization to do business in Missouri;
2. Financial resources and commitments;
3. A detailed description of proposed services, service area, public access, government access, programming, and rates;
4. A detailed construction schedule for serving the proposed service area;
5. System design and technical standards, including performance tests and maintenance procedures;
6. Experience in cable operations;
7. Projections of revenue and expenses by specific source and use, anticipated capital expenditures, and depreciation schedule and justification;
8. A description of how the proposed system will respond to local needs, how the system will contribute to public and community service institutions, and how the system will contribute to local economic development; and
9. Acceptance of the provisions and requirements of this Chapter.

Sec. 9-152. Grant of initial franchise.

A. If the City Council determines the request for an initial Franchise meets the following minimum criteria, it shall grant the Franchise:

1. The request is complete and includes all necessary and required information;
2. The financial resources and commitments are sufficient to reasonably assure the proposed system will be constructed and operated;
3. The legal qualifications of the applicant to own, construct and operate a system within the City is established.
4. At least one-half of the proposed service area is scheduled to be served in the first year, three-fourths by the end of the second year, and the remainder by the end of the third year.
5. The Franchise will not adversely affect the public health, safety and welfare taking into account, but not limited to, any burden, nuisance or other adverse effect such Franchise will have on the streets and public property of the City.

6. The needs and interests of the community will be met by the grantee, including but not limited to, present and future needs and interests relating to public, educational and government access programming; the provision of other programming as provided in the Franchise Agreement; and the provision of cable service to all citizens of the community.
7. The grantee shall provide adequate equipment, facilities and customer service personnel to respond to subscriber or potential subscriber requests in a timely and efficient manner, including but not limited to the establishment and publication of standard office procedures for resolution of complaints relating to the provision of service or billing; procedures for the installation and disconnection of cable service; and access to the business office of grantee.

B. Grantee shall accept the Franchise, and Franchise Agreement in form and substance acceptable to City. Upon acceptance of the Franchise, and Franchise Agreement, grantee shall be bound by all its terms and provisions.

C. Grantee shall have continuing responsibility for the Franchise, and Franchise Agreement, and if grantee be a subsidiary or wholly owned corporate entity of a parent corporation, the Franchise Agreement may require that performance of the Franchise and Franchise Agreement be secured by a guaranty of the parent corporation in form and substance acceptable to City, which shall be delivered at time of, and as part of, acceptance of the Franchise.

D. With its acceptance, grantee shall deliver to City true and correct copies of documents creating grantee and evidencing its power and authority to accept the Franchise. Further, such documents shall describe officers authorized to execute the Franchise on behalf of grantee.

E. With its acceptance, grantee shall also pay reasonable costs and expenses incurred by City incidental with the award of the franchise. City shall provide an itemized statement to grantee. Costs or expenses the City does not identify at that time shall be paid promptly by grantee upon receipt of an itemized statement from the City. It is the intent of the City and grantee that any consultant used during the initial franchise grant, shall be selected by both grantee and City and the expense for said consultant paid equally by both the City and the grantee.

F. All letters of credit, insurance contracts, bonds and guarantees required of grantee by the Franchise shall be delivered with the acceptance.

G. Upon the delivery of the above described documents and within sixty (60) days of acceptance of the Franchise, City and grantee shall execute the Franchise Agreement.

H. Grantee's specific understandings, agreements, commitments, offers, promises, representations and inducements to the City shall be embodied in and incorporated into the Franchise Agreement to be entered into between City and grantee based upon the authority granted pursuant to this Chapter. In the event of conflict or discrepancies between any parts of the Agreement entered into between City and grantee or this Chapter, these provisions of the Franchise Agreement shall prevail.

I. Subject to provisions of any franchise granted hereunder and this Chapter, City, from time to time, reserves the right to amend the Chapter. Grantee, by acceptance of the Franchise consents to and agrees to be bound by any such amendment upon receipt of notification of such change, provided, however, that such change does not materially interfere or conflict with existing rights or obligations of the grantee under the Agreement or the Enabling Ordinance.

Secs. 9-153 - 9-165. Reserved.

Rev. 9/30/2009

(Ord. 13159, 1-16-2001)

Rev. 9/30/2009