

Chapter 86 -- Cable TV Franchise

86.010. Definitions. When used in this Chapter, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural):

1. "City" means the City of Holts Summit, Missouri, and when this Chapter refers to action to be taken by the "City," the same shall mean action by the governing body of the City of Holts Summit, Missouri.

2. "Board" means the Board of Aldermen or other governing body of the City.

3. "Grantee" means the corporation granted the franchise and right to operate a cable television system within the City, and its successors and assigns, under this Chapter.

4. "Person" means any natural person, company, or entity of any kind.

5. "Franchise area" means that area within the corporate limits of the City as now or hereafter constituted.

6. "Street" means the surface of and the space above and below any public street, way, place, right-of-way, road, highway, freeway, bridge, tunnel, lane, path, bike-path, alley, court, sidewalk, parkway, drive, communications or utility easement, by whatever name called, now or hereafter existing as such within the franchise area.

7. "Property of Grantee" means all property owned, installed or used by the Grantee in the conduct of a CATV business in the City.

8. "CATV" means a cable television system.

9. "Cable Television System" means a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable radio, television or other electronic or electrical signals to and from persons, subscribers, and locations in the franchise area.

10. "Basic CATV Service" means the distribution of broadcast television signals by the Grantee.

11. "Subscriber" means any person or entity receiving and paying for basic CATV service.

12. "Basic Subscriber Revenue" means all remuneration received directly by the Company from subscribers in payment for regularly furnished basis CATV service, but shall not include any taxes on services furnished by the Grantee imposed on any subscriber or user by any government, governmental unit, political subdivision, agency, or instrumentality, and collected by Grantee.

86.020. Grant of authority. There is hereby granted by the City to the Grantee the right and privilege to engage in the business of operating and providing a CATV system in the City, and for the purpose to erect, install, construct, repair, replace, reconstruct, maintain, and retain in, on, over, under, upon, across, and along any street or streets laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the City.

86.030. Nonexclusive grant. The right to use and occupy said streets for the purposes herein set forth, shall not be exclusive in the Grantee.

86.040. Term of franchise. The franchise and rights herein granted shall commence on the date indicated in the Agreement incorporated as Exhibit A to this Chapter and shall continue in force and effect for fifteen (15) years after said effective date. Upon application by the Grantee to the City, the City may renew this franchise at City's option, for an additional fifteen (15) year period.

86.042. Extensions. The Board may, by majority vote, extend the term of the franchise(s) for periods of less than fifteen (15) years when deemed appropriate." (Ord. #909 - April 14, 1997)

86.050. Conditions of street occupancy.

1. All transmission and distribution structures, poles, lines, and equipment installed or erected by the Grantee within the franchise area shall be so located as to cause minimum interference with the proper use of streets and with the rights and reasonable convenience of property owners who adjoin any of said streets. The CATV

system shall be constructed and operated in compliance with applicable governmental construction and electrical codes.

2. In case of disturbance of any street or paved area, the Grantee shall, at its expense and in a manner approved by the City, replace and restore such street or paved area in as good condition as theretofore, provided, that Grantee shall notify the city street commission of its intention to cut or disrupt the surface of any such street no less than forty-eight (48) hours prior to the time the surface of any such street or paved area is disturbed.

3. The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, any property of the Grantee when lawfully 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, gas or water pipes, or any other type of structures or improvements by the City; but, the Grantee shall in all cases have the right of abandonment of its property, subject to City ordinances, and if public funds are available to any utility company for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

4. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings, provided:

a. the expense of such temporary raising and lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and

b. the Grantee is given not less than three business days advance notice to arrange for such temporary wire changes.

5. The Grantee shall have the authority to trim trees overhanging any streets in the franchise area so as to prevent branches from coming in contact with the Grantee's wires and cables, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the Grantee's expense.

6. Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street, provided:

a. such use by the City does not interfere with the use by the Grantee; and

b. the City holds the Grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits.

86.060. Safety requirements.

1. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

2. All structures and all lines, equipment, and connections in, over, under, and upon all streets of the franchise area shall be kept and maintained in a safe and suitable condition and in good order and repair.

86.070. System construction and extension.

1. The Grantee is hereby authorized to extend the system within the franchise area to the extent that such extension is or may become technically and economically feasible, provided, however, that within nine (9) months following Grantee's obtaining all necessary pole clearances from local telephone and electric utility companies, but in no event later than eighteen (18) months from the effective date of this Chapter, Grantee shall make basic CATV service available to all persons and residences located within the incorporated limits of City without regard to the technical or economic feasibility of offering such service.

2. For purposes of guaranteeing the performance by Grantee with respect to making basic CATV service available to all persons and residences within said 18-month period as provided for in Subsection 1 above, Grantee shall post a cash bond of Twenty-five Thousand Dollars (\$25,000) with the city treasurer within one week following the effective date of this Chapter. Should Grantee fail to post said cash bond within said period, the franchise given to Grantee hereunder shall terminate immediately. Said cash bond shall be held by City in an interest bearing account for a period of eighteen (18) months beginning with the effective date hereof. In the event Grantee has made basic CATV service available to all persons and residences within City as provided for in Subsection 1 above before the end of said 18-month period then said cash bond and all interest thereon shall be refunded and paid over to Grantee, otherwise the same shall be forfeited to City and the franchise granted hereunder shall immediately terminate; provided, however, that upon Grantee's application, and for good cause, City may extend said 18-month period for such additional period as the Board may deem appropriate.

3. Subsequent to the completion of construction of the Cable Television System and basic CATV service being made available to all persons and residences within the incorporated limits of City as provided for above, whenever the Grantee shall have received written requests for service from at least fifteen (15) subscribers within 400 cable meters (1300 cable feet) of its aerial trunk cable, or from at least twenty-five (25) subscribers within 400 cable meters (1300 cable feet) of its underground trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 400 meters shall be measured in extension length of Grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.

4. Subsequent to the completion of construction of the initial CATV system, no person in the Grantee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when the distance from distribution cable to connection of service to subscribers is more than 45 meters (150 feet of cable) or when a subscriber density exists less than the density specified hereinabove, service may be made available on the basis of costs of materials, labor, and easements, in order to prevent inequitable burdens on cable subscribers in more densely populated areas.

5. For all residential structures hereafter erected which are to be served by underground utilities, the developer of the subdivision or development may acquire CATV service for this development under the following conditions; but otherwise the Grantee shall not be obligated to construct CATV system in such new development: developer shall perform all trenching and backfilling necessary for the provision of cable television service, including furnishing of any imported backfill material required, and will furnish and install for the Grantee any necessary distribution conduit and substructures, including pedestals, required in accordance with the Grantee's plans and specifications. Developer may enter into a written agreement with the Grantee whereby such costs may be reimbursed to the developer by Grantee at the rate of fifty percent (50%) of basic subscriber revenues generated from CATV service supplied within the development over a period of not to exceed three (3) years.

6. In addition to providing plans and specifications to the developer, the Grantee shall inspect the facilities required hereunder, and certify to the City prior to final approval of the subdivision or development that the facilities required herein are properly installed. The City shall have the right to review and require its approval of the maps and specifications provided by the Grantee. The cost of that portion of an extension to a subdivision or development from the Grantee's existing facilities in excess of 60 meters (200 feet) outside the boundaries of the subdivision or development shall be borne by the developer. Facilities installed hereunder shall be owned, operated, and maintained by Grantee.

7. Construction of trunk feeder and drop cables may be connected overhead where poles now exist and either electric or telephone lines are now overhead, but where no overhead poles now exist, all trunk, feeder, and drop cables shall be constructed underground, provided the same is economically, technically, and physically feasible. Whenever and wherever either electrical lines or telephone lines are moved from overhead to underground placement, all television cables shall be similarly moved and the cost of moving any such cables shall be solely the obligation of Grantee.

86.080. Operational standards; force majeure.

1. The Grantee shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.

2. The Grantee shall have no obligation to extend the initial CATV system, other than as hereinbefore provided, nor to provide, repair, replace, maintain, or operate CATV service, during any period of time the same has been disrupted or discontinued for any cause beyond Grantee's control, including, without limitation, acts of God, fire, flood, earthquakes, hurricane, unavoidable casualty, extraordinary delays in transportation, strikes, lockouts, picketing, boycotts, embargoes, government orders or other requirements, acts of civil or military authorities, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, energy shortages, acts or omissions of carriers, or activities or other emergency conditions including weather conditions incompatible with good quality workmanship, provided, that at such time as the cause of any such disruption or discontinuance of service no longer exists or is removed or alleviated, Grantee shall proceed to install and reinstate CATV service to all those to whom service has been previously provided.

86.090. Business office; complaints. The Grantee shall maintain a business office or agent which subscribers may telephone during regular business hours without incurring added message or toll charges, so that complaints regarding cable television operations may be promptly reported to the Grantee.

86.100. Rates. The Grantee shall maintain on file with the city clerk a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including connection and service charges. Notice of changes in rates and charges shall be filed with the city clerk at least thirty (30) days in advance of the effective date thereof, provided that the initial rates set forth on Exhibit A shall remain unchanged for no less than twenty-four (24) months following initial system turn on.

86.110. Franchise payments. The Grantee shall pay the City, on or before each March 31st, a franchise fee of five percent (5%) of basic subscriber and pay TV revenues received for cable television operations in the City for the preceding calendar year, and no other fee, charge, or consideration. Sales tax or other taxes levied on a per subscription basis and collected by the Grantee shall be deducted from the gross annual basic subscriber revenues in computing any sums due the City. The Grantee shall provide an annual summary report showing gross annual basic subscriber revenue received during the preceding year.

86.120. Indemnification of City.

1. The Grantee shall at all times protect and hold the City harmless from all claims, actions, suits, liabilities, loss, expense, or damages, of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Grantee in the ownership, construction, repair, replacement, maintenance, and operation of said cable television system and by reason of any license, copyright, property right, or patent of any article or system used in the construction or use of said system, provided the City gives the Grantee prompt notice of any such claims, actions, and suits, without limitation, in writing. The Grantee shall maintain in full force and effect during the life of any franchise, public liability and property damage insurance for an amount of at least Three Hundred Thousand Dollars (\$300,000) single limit liability from the time of commencement of construction of the CATV system.

2. All such insurance may contain reasonable deductible provisions not to exceed One Thousand Dollars (\$1,000) for any type of coverage. The City may require that any and all investigation of claims made by any person against the City arising out of any use or misuse of privileges granted to the Grantee hereunder shall be made by, or at the expense of the Grantee or its insurer. The Grantee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement, or otherwise, provided, however, the interests of the City shall be as fully protected thereby as if the Grantee had obtained individual policies of insurance.

86.130. Procedures.

1. Any inquiry, proceeding, investigation, or other action to be taken or proposed to be taken by the City in regard to the operations of the Grantee's cable television system, shall be taken only after thirty (30) days written notice to the Grantee of such action or proposed action, and the Grantee has been given an opportunity to respond in writing and at any hearing which may be specified by the City.

2. The notice required by this Section shall state clearly the action or proposed action to be taken, the time provided for response, and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the City. If a hearing is to be held, the notice shall give the date and the time of such hearing, whether public participation will be allowed, and the procedures by which such participation may be obtained. The Company shall be a necessary party to any hearing conducted in regard to its operation.

86.140. Procedure upon termination. Upon termination, revocation, or expiration of the franchise granted by this Chapter, Grantee may have and is hereby granted, the right to enter upon the streets or other property of the City, for the purposes of removing therefrom any or all of its property. In so removing said property, the Grantee shall refill, at its expense, any excavation that it shall make and shall leave said streets in as good condition as that prevailing prior to the Grantee's removal of its property. Should Grantee fail to so remove its property from city streets or other city property or to remove its property from the poles and underground conduits maintained by Grantee or by telephone and electric utility companies, within ninety (90) days following termination, revocation, or expiration of the franchise granted by this Chapter, then all such property of Grantee located on city streets or other city property or located on poles or underground conduits maintained by telephone or electric utilities within the City, shall immediately become the property of the City.

86.150. Approval of transfer. The Grantee shall not sell or transfer its plant or system to another, other than a person controlling, controlled by or under common control with the Grantee, nor transfer any rights under this franchise to another without Board approval. No sale or transfer of the Grantee's assets used in the performance of this franchise shall be effective until the vendee, assignee, or lessee has filed in the office of the city clerk an instrument duly executed reciting the fact of such sale, assignment, or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such Board approval shall not be unreasonably withheld and neither this Section nor other sections of this franchise shall preclude the mortgaging, hypothecating, or assigning of rights in the system, or the pledge of stock by the Grantee for the purpose of financing.

86.160. Miscellaneous provisions.

1. When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the city clerk.

2. The Grantee shall assume the cost of publication of the franchise ordinance when such publication is required by law. A bill for publication costs shall be presented to the Grantee by the city clerk.

3. The Grantee shall provide without charge one outlet of basic CATV service to each city office building, fire station, police station, and public school building that is passed by its cable. The distribution of the cable facility inside such buildings and the extent thereof shall be at the option, duty, and expense of the building owner. With the exception of the foregoing, all subscribers, other than hospitals, hotels, motels, and nursing homes shall pay the same prices for all types of cable television service and Grantee shall not grant any discount, rebate or allowance to any subscribers for basic monthly or pay TV services.

4. In the case of any emergency or disaster, the Grantee shall, upon request of the City make available its facilities to the City for emergency use during the emergency or disaster period.

86.170. Compliance with applicable laws and ordinances. The Grantees shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the City. The City reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be necessary to the exercise of police power. Such regulation shall be reasonable and not in derogation of the rights herein granted, nor in conflict with the laws of the state or other local or federal laws or regulations.

86.180. Violations; penalties.

1. From and after the effective date of this Chapter, it shall be unlawful for any person to construct, install, or maintain within any public street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street or any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a CATV 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.

2. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the franchised CATV system within this City for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission, without payment to the Grantee.

3. It shall be unlawful for any person, without the consent of the owner, wilfully to tamper with, remove, or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, sound, or other transmission.

4. Any person violating or failing to comply with any of the provisions of this Section shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine of not to exceed One Hundred Dollars (\$100) or by confinement in the city jail for a term not to exceed thirty (30) days, or both.

86.190. Line severing. If at any time the Grantee's cable and/or other equipment is disturbed, damaged, or severed, the cost of repair shall be paid by the party responsible for said damage. The Grantee may charge the responsible party for the time and materials expended for repair of said damage. The City will cooperate with the Grantee to assist in enforcing any charge or penalty arising from cable severing or other damage to Grantee's property.

86.200. Revocation. City shall have the right to revoke the franchise granted hereunder, by ordinance, in the following instances:

1. Grantee has failed to consistently maintain a high quality CATV signal to its subscribers providing for a clear picture and sound;

2. Grantee has failed to maintain adequate continuity of basic CATV service to its subscribers;

3. Grantee has failed to promptly resolve local service complaints by subscribers;

4. Grantee has failed to provide those 16 CATV signals referred to in Exhibit A, or such other and number of signals agreed to by Grantee and City;

5. Grantee has violated any other material provision of this Chapter;
or

6. Grantee has abandoned the system by failing to operate the same for a period of ten (10) continuous days.

7. The Board determines that Grantee has practiced fraud upon City. Prior to any revocation of the franchise granted hereunder by City, City shall give thirty (30) days prior written notice to Grantee of any such proposed revocation and shall conduct a public revocation hearing no earlier than thirty (30) days after said notice is mailed to Grantee on the

matter of revocation of the franchise granted hereunder. Said notice shall contain those things required in Section 86.130(2) above and Grantee shall have the right to respond to any such proposed action by the City in writing and to present its case at said hearing.

8. At said hearing, should the Board determine that grounds for revocation exist under 6 or 7 above, the Board may proceed to revoke the franchise granted hereunder, by ordinance.

9. At said hearing, should the Board determine that grounds for revocation exist under Subsections 1, 2, 3, 4, or 5 above, then City shall so inform Grantee, in writing, and Grantee shall thereafter have ninety (90) days within which to correct any such deficiencies or violations. If at the end of said ninety (90) day period the Board determines, after a public hearing, that any such deficiencies or violations have not been corrected, then the Board may proceed to revoke the franchise granted hereunder, by ordinance.