

**ORDINANCE #65210
Board Bill No. 75
Floor Substitute**

An ordinance relating to cable television; authorizing the execution on behalf of the City of St. Louis of an agreement among the City, St. Louis Tele-Communications, Inc. ("Grantee"), conducting business as AT & T Broadband, and Charter Communications Entertainment I, LLC, doing business as Charter Communications ("Charter") ("the "Transfer Agreement"), for the transfer of any cable television franchise held by Grantee to Charter, and approving such transfer subject to the execution of the Transfer Agreement by Grantee and Charter and to the terms and conditions set forth in the Transfer Agreement, effective upon the execution of the Transfer Agreement by Grantee and Charter.

BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:

SECTION ONE. The Communications Commissioner, Comptroller and other appropriate City officials are hereby authorized and directed to execute, on behalf of the City of St. Louis, an agreement in substantially the form attached hereto as Exhibit I (the "Transfer Agreement" among the City, St. Louis Tele-Communications, Inc. ("Grantee") conducting business as AT & T Broadband, and Charter Communications Entertainment I LLC, doing business as Charter Communications ("Charter", for the transfer of any cable television franchise held by Grantee to Charter.

SECTION TWO. The transfer of any cable television franchise held by Grantee to Charter, subject to the execution of the Transfer Agreement by Grantee and Charter, and to the terms and conditions set forth in the Transfer Agreement, is hereby approved, effective upon the execution of the Transfer Agreement by Grantee and Charter.

EXHIBIT 1 BB #75

TRANSFER AGREEMENT

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TRANSFER AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 2001, by and between:

- (1) The City of St. Louis, a municipal corporation of the state of Missouri, organized and existing under its Charter and the constitution and laws of the State of Missouri ("City");
 - (2) St. Louis Tele-Communications, Inc., a Missouri corporation ("Grantee"); and
 - (3) Charter Communications Entertainment I, LLC a Delaware Limited Liability Company ("Charter").
- Charter and the Grantee may be referred to jointly herein as "Companies".

RECITALS

WHEREAS, in 1984, pursuant to Ordinance 58462 (the "Regulatory Ordinance") and Ordinance 59197 (the "Franchise Ordinance"), the City of St. Louis awarded two cable television franchises (the "Prior Franchises") for separate areas of the City comprising the entire area of the City to STL Cablevision Partners and St. Louis City Communications, Inc.; and

WHEREAS, in 1989 pursuant to Ordinance 61093 the City consented to the transfer of the Prior Franchises from the original grantees to St. Louis Tele-Communications, Inc., a Missouri corporation (the "Grantee"), which was owned by Tele-Communications, Inc. ("TCI"); and

WHEREAS, the Grantee is now owned by a subsidiary of AT&T Corporation; and

WHEREAS, the expiration dates of the Prior Franchises have been extended by ordinances, the last of which is City

Ordinance 65186, which extended such expiration dates until August 13, 2001 or the effective date of a renewal franchise granted to the Grantee, whichever is earlier; and

WHEREAS, the City and the Grantee have agreed upon the terms of a renewal franchise ("Renewal Franchise"); and

WHEREAS, such Renewal Franchise when effective will be subject to the provisions of the Renewal Franchise Agreement and ordinance authorizing such Agreement; of the amended regulatory ordinance; of a customer service ordinance; and of an ordinance regarding broadband Internet access (which documents are referred to collectively herein as the "Renewal Franchise Documents"), and in addition is granted in light of a settlement agreement entered into in conjunction with the Renewal Franchise ("Settlement Agreement"), all of the documents referred to in this paragraph being attached as exhibits hereto; and

WHEREAS, on February 26, 2001, St. Louis Tele-Communications, Inc., TCI Cable Partners of St. Louis, L.P., TCI Cablevision of Missouri, Inc., TCI of Illinois, Inc., TCI TKR of Central Florida, Inc., TCI Holdings, Inc. and Charter entered into an Asset Purchase Agreement whereby Charter would purchase substantially all of the assets of certain cable systems, one of which was the cable system operated by the Grantee in the City; and

WHEREAS, on or about March 1, 2001, Charter and Grantee filed an FCC Form 394 pursuant to the 1992 Cable Act, FCC regulations, and the Prior Franchises (the "Transfer Application"), requesting that the City approve the application for the Transfer of the Prior Franchises from the current Grantee to Charter; and

WHEREAS, Article XIX Section 1 of the City Charter, Section 8.29.060(D) of the City Code and Section 8.29A.060 (C) of the City Code provide that the prior approval of City is required for the Transfer of the Prior Franchises from the current Grantee to Charter (the "Proposed Transaction"); and

WHEREAS, relying on Grantee's and Charter's representations concerning the Proposed Transaction (including but not limited to those in the Transfer Application, a letter from M. Celeste Vossmeier to Larry D. Stone dated April 9, 2001, and this Transfer Agreement), the City is willing to grant its consent to the Proposed Transaction as hereinafter provided;

NOW, THEREFORE, THE PARTIES DO HEREBY AGREE as follows:

1. TRANSFER OF FRANCHISE

1.1. The foregoing recitals are true and correct and are incorporated herein by reference.

1.2. In consideration for the promises and performances of Grantee and Charter, as expressed in this Transfer Agreement, and relying on the representations of the Companies in the Transfer Application, a letter from M. Celeste Vossmeier to Larry D. Stone dated April 9, 2001, and this Transfer Agreement, the City has by the Transfer Ordinance consented to the transfer of the System and any cable franchise granted by the City and held by the Grantee pursuant to the Transfer Application, subject to the terms and conditions of this Transfer Agreement and of the City's Ordinance consenting to the Proposed Transaction.

1.3. The City, by its consent to the Proposed Transactions, does not approve or endorse the terms of any document related to the Proposed Transactions. Without limiting the foregoing, to the extent there is a conflict between (1) the terms and conditions of this Transfer Agreement and the Prior Franchises or Renewal Franchise Documents and (2) any contract (other than a contract with the City) related to the Proposed Transactions, or any contract that may affect the City as a result of the Proposed Transactions, the Companies agree that the terms of (2) shall not excuse the Companies from performance of any of their respective obligations under (1).

2. ACCEPTANCE OF FRANCHISE OBLIGATIONS

2.1. Charter hereby accepts, acknowledges, and agrees that, upon the closing of the Proposed Transaction, (a) if such closing occurs before the effective date of the Renewal Franchise, it will be bound by all the obligations, present, continuing and future, embodied in the Prior Franchises until the effective date of the Renewal Franchise, and thereafter by those of the Renewal Franchise Documents and the Settlement Agreement, or (b) if such closing occurs on or after the effective date of the Renewal Franchise, it will be bound by all the obligations, embodied in the Renewal Franchise Documents and the Settlement Agreement. Upon the closing of the Proposed Transaction the Renewal Franchise Documents and the Settlement Agreement are hereby amended to substitute Charter for the Grantee in all respects, including without limitation any liability there may be thereunder for any and all previously accrued but unfulfilled obligations to the City under the Prior Franchises and applicable law.

2.2. Grantee hereby acknowledges, and agrees that Grantee will continue to be bound by all the obligations, present, continuing and future, embodied in the Prior Franchises until the effective date of the Renewal Franchise, and thereafter by those of the Renewal Franchise Documents and the Settlement Agreement until Charter assumes the Grantee's obligations upon the closing of the Proposed Transaction and Charter's acceptance as set forth herein of either (a) the Prior Franchises or (b) the Renewal Franchise Agreement and Settlement Agreement pursuant to Sections 2.1 and 2.3 of this Transfer Agreement, at which time the obligations of the Grantee under the Prior Franchises and the Renewal Franchise and Settlement Agreement shall cease. Notwithstanding the foregoing, Grantee shall maintain its bond in effect for six months after the closing of the Proposed Transaction, pursuant to Section 21(1) of Ordinance 59197.

2.3. If the Proposed Transaction closes on or before the effective date of the Renewal Franchise, Charter shall execute and submit to the City an acceptance of the Prior Franchises as in effect as of that date; shall accept in their place the Renewal

Franchise within thirty City business days after the effective date of the ordinance awarding the Renewal Franchise as prescribed in the Renewal Franchise Documents; and shall execute the Settlement Agreement no later than such acceptance of the Renewal Franchise. If the Proposed Transaction closes after the effective date of the Renewal Franchise, Grantee shall accept the Renewal Franchise within thirty City business days after the effective date of the ordinance awarding the Renewal Franchise as prescribed in the Renewal Franchise Documents, and shall execute the Settlement Agreement no later than such acceptance of the Renewal Franchise; and Charter shall accept the Renewal Franchise, and shall execute the Settlement Agreement, on the date of closing of the Proposed Transaction.

2.4. The Companies shall ensure that all records pertaining to the Prior Franchises and the Renewal Franchise, including but not limited to any information requested by the City for its review of Grantee's or Charter's rate filings to the extent the City is entitled to such information under the terms of the applicable franchise documents and applicable law, shall continue to be available after the Proposed Transaction for purposes of the City's enforcement of the obligations under those franchises and applicable law.

2.5. Charter agrees to provide a parent company guarantee from Charter Communications Holdings, LLC, acceptable to the City, guaranteeing performance by Charter of all its obligations under the Renewal Franchise Documents and Settlement Agreement. The signed guarantee must be provided with Charter's acceptance of the Renewal Franchise. A form of such a guarantee is attached as Exhibit B.

3. RESERVATION OF RIGHTS

3.1. The City reserves all rights not expressly granted in this Transfer Agreement, including without limitation those specified below.

3.2. The City's approval of the Proposed Transaction shall in no way be deemed a representation by the City that the Grantee is in compliance with all of its obligations under the Prior Franchises.

3.3. Neither this Transfer Agreement, nor any other action or omission by the City at or before the execution of this Transfer Agreement, shall be construed to grant the City's consent to any future transfer of the Prior Franchises, the Renewal Franchise and/or the System, and/or any future change in ownership and/or control of the Renewal Franchise and/or the System, or to mean that the City's consent to any future transaction is or is not required.

3.4. Any consent given by the City to the Proposed Transaction is made without prejudice to, or waiver of, any rights the City may have to investigate and consider any lawful relevant considerations during any future franchise renewal or transfer process.

4. NO EFFECT ON RATES

4.1. The City and Charter shall abide by all applicable rate regulations. The Companies shall not use the Proposed Transaction as a basis for increasing subscriber rates.

4.2. This Transfer Agreement does not resolve and shall not affect (except as to the release of Grantee and replacement by Charter as the cable operator) any pending proceedings regarding regulation of cable rates, and the City reserves any rights it may have to order refunds and rate reductions or pursue other remedies against Charter, to the extent consistent with applicable law and FCC regulations.

5. REPRESENTATIONS AND WARRANTIES

5.1. Each of the Companies hereby represents and warrants that at the time of the execution of this Agreement: (a) it is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; (b) the Renewal Franchise Documents, the Settlement Agreement, and this Transfer Agreement, assuming due execution thereof by the parties, constitute legal, valid and binding obligations of the applicable parties enforceable in accordance with their terms.

5.2. Charter represents and warrants that after the Proposed Transaction, Charter's financial qualifications will be such as shall enable it to fulfill the obligations of the Renewal Franchise Documents and the Settlement Agreement.

6. INDEMNIFICATION

6.1. Each of the Companies agrees to indemnify and hold the City harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) caused by any representation or warranty made by that Company herein which is determined by a court of competent jurisdiction or by the parties to be untrue or inaccurate in any material respect.

6.2. Charter shall indemnify the City against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) incurred by the City in connection with any claim, action or proceeding raised or commenced by a third party (not one of the parties to this Transfer Agreement) claiming or asserting any liability of the City arising from the Proposed Transaction or this Transfer Agreement.

7. ADDITIONAL CONDITIONS

7.1. The City's approval of the Proposed Transaction is subject to the acceptance of the Renewal Franchise Documents and Settlement Agreement as provided in Section 2 hereof and compliance with all other material terms of this Transfer Agreement; otherwise any City consent to the Proposed Transaction shall be void and of no force or effect, and the City's approval of the Proposed Transaction deemed to have been timely denied, unless the City and the Companies execute revised documents in their place as mutually agreed to by the City and the Companies.

7.2. In the event the Proposed Transaction does not close with respect to the St. Louis system by December 31, 2001, or closes on terms with respect to the St. Louis system that differ materially from those disclosed to the City in writing in conjunction with the Application prior to the City's consent by ordinance to the Proposed Transaction, then any City consent to the Proposed Transaction shall be void and of no force or effect, and the Proposed Transaction deemed to have been timely denied by the City.

8. MISCELLANEOUS PROVISIONS.

8.1. Effective Date: This Transfer Agreement shall be effective and binding upon the signatories once it has been signed by all signatories.

8.2. Binding Acceptance: This Transfer Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. Any purported assignment of this Transfer Agreement is void without the express written consent of the signatories.

8.3. Voluntary Agreement: This Transfer Agreement is freely and voluntarily entered into by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Transfer Agreement. Neither any of the Companies, nor any entities they control, nor the City, will take any action directly or indirectly to challenge any provision of this Transfer Agreement, to participate with any other person or entity in any such challenge, or to induce any such challenge.

8.4. Severability: If any term, condition, or provision of this Transfer Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the parties as appropriate. If and when any material provision of this Transfer Agreement is found to be invalid, preempted, or unenforceable so as to alter the essence of this Transfer Agreement, the parties shall enter into good-faith negotiations with the intent of reaching an agreement that would restore the essence of this Transfer Agreement.

8.5. Counterparts: This Transfer Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

8.6. Conforming Amendments to Franchise Documents: Charter agrees to accept and execute amendments to the Prior Franchises, the Renewal Franchise Documents and the Settlement Agreement, as appropriate, that may be adopted by the City to the extent necessary to reflect the Proposed Transaction or the provisions of this Transfer Agreement.

8.7. Governing Law: Except as to matters which are governed solely by federal law or regulation, this Transfer Agreement shall be governed in all respects by the law of the State of Missouri.

8.8. Captions and References: The captions and headings of sections throughout this Transfer Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Transfer Agreement. Such captions shall not affect the meaning or interpretation of this Transfer Agreement.

AGREED TO THIS ____ DAY OF _____, _____.

The City of St. Louis
a municipal corporation of Missouri

By: _____
Larry D. Stone
Communications Commissioner

By: _____
Darlene Green
Comptroller

APPROVED AS TO FORM:

City Counselor

ATTEST:

Register

St. Louis Tele-Communications, Inc.,

By: _____

Charter Communications Entertainment I, LLC

By: _____

Celeste Vossmeier
VP-Government Relations

EXHIBIT A

- Renewal Franchise Agreement
- Settlement Agreement
- Regulatory Ordinance
- Customer Service Ordinance
- Broadband Internet Access Ordinance

EXHIBIT B

GUARANTEE OF PERFORMANCE

WHEREAS, Charter Communications Entertainment I, LLC a Delaware Limited Liability Corporation (“Charter”) has requested that the City approve an application for the transfer of its cable franchise(s), which is being renewed concurrently with such transfer, from the current Grantee to Charter; and

WHEREAS, the franchise to be transferred is subject to the provisions of the Franchise Agreement and ordinance adopting such Agreement; of the amended regulatory ordinance; of a customer service ordinance; and of an ordinance regarding broadband Internet access (which documents are referred to collectively herein as the “Renewal Franchise Documents”), and in addition is granted in light of a settlement agreement (“Settlement Agreement”); and

WHEREAS, Charter Communications Holdings, LLC, a Delaware limited liability company (“Guarantor”), is an indirect parent of Charter and will have a substantial interest in the cable franchise, in the conduct of Charter, and in the Renewal Franchise Documents and Settlement Agreement, which are incorporated herein by this reference;

NOW, THEREFORE, the Guarantor hereby unconditionally guarantees the due and timely performance of any and all obligations of Charter required by the Renewal Franchise Documents and the Settlement Agreement. This Guarantee, unless terminated, substituted or canceled as hereinafter provided, shall remain in full force and effect for the term of the Franchise, as it may be renewed or extended and as provided by the Renewal Franchise Documents; provided, however, that upon the City's prior written approval of a substitute guarantor, which approval shall not be unreasonably withheld, this Guarantee may be terminated, substituted or canceled upon written notice from the Guarantor to the City and Charter. Any such substitution of the Guarantor will be implemented in a manner that ensures that the substitute guarantee is in place and effective prior to or contemporaneously with the termination, substitution or cancellation of this Guarantee so that there is no breach in coverage.

Any such notice to be given hereunder shall be addressed to the Communications Commissioner with a copy to Charter. Such termination shall not affect liability incurred or accrued under this Guarantee prior to the effective date of such termination or cancellation.

By: _____

Name: _____

Title: _____

BOARD BILL NO. 76

INTRODUCED BY ALDERMAN TERRY KENNEDY

An Ordinance to establish mandatory minimum consumer practices and protections for cable operators hereafter providing service in the City of St. Louis with definitions of terms, severability, penalty and emergency provisions.

WHEREAS, the City is empowered under Article I, Section 1(23) and (33), of its Charter to regulate businesses and promote or maintain the comfort, peace and welfare of the City and its inhabitants; and

WHEREAS, the City is authorized to enforce Federal Communications Commission customer service regulations for

operators of cable television systems within the City;

BE IT ORDAINED BY THE CITY OF ST LOUIS AS FOLLOWS:

SECTION ONE. Findings

The Board of Aldermen of the City of St. Louis finds and declares as follows:

- A) Cable television systems occupy public property, to the economic benefit of operators of such systems.
- B) Residents of the City include many elderly and persons of moderate to low incomes, for whom cable television is an important source of information and entertainment.
- C) The quality of cable operators' customer service is an important element of the overall cable television service provided by such operators.
- D) Regulation of customer service standards, as hereinafter provided, is in the best interests of the residents of the City and the City itself.

SECTION TWO. Definitions

As used in this Ordinance, the following terms, phrases, words and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Words in the present tense include the future tense; words in the plural number include the singular number and vice versa, masculine and feminine gender references include each other. The words "shall" and "will" are mandatory and the word "may" is permissive. Unless otherwise expressly stated, or clearly contrary to the context, terms, phrases, words and abbreviations not defined herein shall generally be given the meaning set forth in Title 47 of the U.S. Code or in 47 C.F.R. § 76.309 and, if not defined therein, shall generally be given their common and ordinary meaning. The definitions provided herein shall not apply to any reading or interpretation of 47 C.F.R. § 76.309 even though the same terms may be used therein. Terms used but not defined herein which are defined in other City ordinances pertaining to cable television shall have, for the purposes of this Ordinance, the meanings given them in such other ordinances. Inadvertent failure to capitalize a word shall not affect its meaning.

- (a) *After Hours* means outside Normal Business Hours.
- (b) *City* means the City of St. Louis, a municipal corporation of the State of Missouri, organized and existing under its Charter and the constitution and laws of the State of Missouri.
- (c) *Complaint* means a notice of dissatisfaction by a Subscriber, whether made orally or in writing to the Franchise Agency or the City. Informational inquiries shall not be counted as Complaints, unless the Subscriber was unable to reach the Operator to get the information, nor shall requests for specific channels or programming be counted as a complaint.
- (d) *FCC* means the Federal Communications Commission and its Bureaus.
- (e) *Franchise Agency* or *Agency* means the Communications Division of the Department of Public Utilities of the City or its successor.
- (f) *Franchise Authority* means the Board of Aldermen of the City.
- (g) *Installation* means the connection of the Operator's transmission system to a Subscriber's television or Subscriber-owned or Operator-provided terminal equipment, including initial connections, reconnections, activations, upgrades and downgrades of multi-channel services, whether analog or digital, on-site or computerized.
- (h) *Normal Business Hours* means not less than ten (10) hours each day on weekdays (including some evening hours during the week), and not less than five (5) hours on Saturdays.
- (i) *Normal Operating Conditions* means any and all conditions and situations that are within the control of an Operator, including but not limited to special promotions, staffing levels, regular, peak or seasonal demand periods, maintenance, repair and upgrades of transmission systems, electronic telephone and video equipment of any sort, management decisions, system mapping, employee actions, timing of plant changes or interruptions, corporate decisions, and actions or negligence by the Operator which lead to a high volume of calls, including but not limited to incorrect bills, rate increases, late bills or fees, changes in service and missed appointments). Normal operating conditions do not include situations not within the control of the Operator, including but not limited to natural disasters, civil disturbances, public works projects for which no advance notice is given, severe or unusual weather conditions, any local effects of regional or national conditions not within the control of the operator, and power outages which black out geographic areas and are not confined to video transmission system power supplies.
- (j) *Operator* means any Person to which this ordinance is applicable pursuant to Section Three(a).
- (k) *Outage* means the loss of all video or audio signals to five (5) or more Subscribers along the same trunk or feeder line. *Major outage* means the loss of all video or audio signals to twenty-five percent (25%) or more of all Subscribers in a Cable

System. *Identified outage* means (i) a report of no picture/no sound on all channels from five or more Subscribers in close geographic proximity, or along the same trunk or feeder line, within twenty minutes, or (ii) determination by an Operator without such reports that five or more Subscribers are subject to such conditions.

- (l) *Person* means any individual, business, partnership, association, joint stock company, organization, corporation, proprietorship, governmental agency or political subdivision, or any natural person.
- (m) *Record* means any books or records relating to the Operator's system in the City, including without limitation any books, receipts, subscriber contracts, service complaint logs, signal leakage logs, performance test results, records of requests for service, work orders, telephone call recordings, subscriber files, computer records, codes, programs, and disks or other storage media, and other like materials.
- (n) *Service Interruption* means the loss of video or audio signal on one (1) or more cable channels on a Cable System to one (1) or more subscribers or severe degradation of picture and/or sound that renders the Subscriber unable to use the signals, for any reason.
- (o) *Subscriber* means:
 - i) any Person who lawfully receives Cable Service from an Operator, including commercial as well as residential accounts;
 - ii) the City and its agencies in its capacity as a lawful recipient of such services;
 - iii) any Person previously authorized to receive Cable Service from an Operator;
 - iv) any Person who has applied to an Operator to receive Cable Service from such Operator but who has not yet begun receiving such service.
- (p) *Trained Customer Service Representative (CSR)* means an employee of an Operator who has the authority and ability to perform the following tasks, without limitation, while speaking with a Subscriber: answer billing questions, issue credits and adjust bills, schedule appointments for service and installation, troubleshoot minor service problems over the telephone, arrange changes in service and disconnections, and respond knowledgeably to other Subscriber complaints, requests or questions.
- (q) *Trained Supervisor* means an employee of an Operator with authority to modify the actions of a CSR.

SECTION THREE. Applicability

- (a) This Ordinance shall apply to any Person that provides cable service within the City.
- (b) In addition, the City reserves all of its rights with respect to Persons other than those that provide cable Cable Service within the City.

SECTION FOUR. General Customer Service Practices

- (a) This Ordinance sets forth customer service standards that an Operator must satisfy. In addition to the requirements set forth herein, an Operator at all times shall satisfy any additional or stricter requirements established by FCC regulations, or other applicable federal or state law or regulation, as amended from time to time.
- (b) An Operator shall maintain such equipment and keep such Records as are required to enable the Franchise Authority or Franchise Agency to determine whether the Operator is complying with all standards required by these regulations and other applicable law, as amended from time to time. Failure to keep and maintain such Records shall not excuse an Operator's failure to comply or to show compliance with this Ordinance.
- (c) Failure of an Operator to hire sufficient staff or properly train its staff shall not justify an Operator's failure to comply with this Ordinance. The responsibility of any Person providing Cable Service to comply with this Ordinance shall not be diminished or affected by that Person's use of contractors or other agents.
- (d) The intent of this Ordinance is to ensure that an Operator provides prompt customer service response, support personnel and services sufficient to provide a reasonable level of customer service in the City.
 - 1. At a minimum, an Operator must :
 - (A) have qualified members of the technical staff either present or on-call twenty-four hours a day, seven days a week, to respond to and investigate outages and other major problems;
 - (B) have all employees give the employee's name (and upon request, an employee ID code) to Subscribers or other Persons when answering an incoming call or inquiry and when keeping an appointment with a Subscriber.

2. A pattern of offensive language by Operator personnel may be considered in determining the ability of the operator to meet community needs.
3. An Operator shall respond to all Subscriber or user inquiries and complaints no more than five (5) business days after the inquiry or complaint, except to the extent a different standard is set forth for specific types of inquiries or requests herein. "Respond" to the inquiry or complaint as used in this paragraph shall mean to contact the Subscriber and discuss the actions that have been taken or are being taken to address the Subscriber's concerns.

SECTION FIVE. Telephones, Business Offices and Support Services

- (a) **OFFICES:** An Operator must maintain a minimum of two (2) customer service locations located within the City, which can fully accommodate bill payments; equipment disbursement, return or exchange; and in-person discussion with Trained Customer Service Representatives. At least one such location must be open for these purposes at least during Normal Business Hours. At least one other such location must be open for these purposes at least for a time period which is one hour per day less than Normal Business Hours.
 1. Trained Supervisors shall be available in at least one such location at all times when it is open to meet in person with a Subscriber or other Person requesting such a meeting. All other such locations shall have Trained Supervisors available to Subscribers by telephone at all times when they are open.
 2. Operator shall prepare and distribute to the Franchise Agency an annual calendar of holidays and business days on which the Operator's customer service locations required by Section Five(a) will be closed. Operator shall provide notice to Subscribers regarding hours or dates when such locations will not be open through at least two (2) of the following means: advertisement, answering service/machine voice-mail messages, bill messages, direct mail, or through its cable system (or any other means deemed reasonable by the Agency). Notice of any closures other than regularly scheduled dates will be provided at least five (5) days prior to the date of the closure to the extent this is feasible, and if not, then as far in advance as feasible. An Operator shall provide voice messaging and door signage notices during any period when the Section Five(a) customer service locations are closed due to holidays or unusual circumstances during hours when they are ordinarily open.
 3. Nothing in this section shall preclude Operator from establishing additional payment sites of its own or via third party vendors.
- (b) **TELEPHONES:** Operator must maintain at least one local toll-free or collect telephone access number which is available to Subscribers twenty-four hours a day, seven days a week. An Operator may establish separate telephone numbers for Normal Business Hours telephone access and for After Hours repair telephone access. An Operator must have publicly listed telephone numbers for Normal Business Hours and After Hours lines, the listings to include descriptions that allow Subscribers readily to determine which number is appropriate to call for a given time and Subscriber location.
 1. Telephones must be answered by a Trained Customer Service Representative (not an answering service or machine alone) twenty-four hours a day, seven days a week, so that Subscribers may register service complaints, report service problems or outages, and request installations and repairs. Nothing herein shall be construed to prohibit an automated response unit as a first step in answering a customer call so long as the performance standards in Section Five(c) herein are met. Customer service representatives answering the phones must be able to contact qualified technical staff at all times for response and action in the event of an outage or other major problem.
 2. A repair line must be available at all times, including holidays. While such line may be part of an Operator's regional call center (rather than specific to the City system), it must be staffed by Trained Customer Service Representatives capable of receiving and responding to service complaints and inquiries, and setting up appointments for installations and service calls, generated by City Subscribers. If a company representative cannot fully respond to a Subscriber call or request after Normal Business Hours, a Trained Customer Service Representative or Trained Supervisor must contact the Subscriber and respond to inquiries or problems by the end of the next business day.
 3. Trained Supervisors shall use their best efforts to respond to Subscriber telephone requests to speak with a "manager" or "supervisor" within two hours of the request, but in any case shall respond to such requests no later than the next business day. Periods of natural disasters and Outages are exempt from this response time standard, but during such periods such calls must be returned within a reasonable period of time, generally not to exceed twenty-four hours. An Operator shall keep a report log of such Subscriber requests available for review by the Franchise Agency.
 4. Automated message systems must provide a clearly indicated opportunity to speak with a Trained Customer Service Representative.
 5. Automated message systems may not disconnect callers without allowing the caller an opportunity to return to the message system and make another menu selection or to speak with a Trained Customer Service Representative.

- (c) TELEPHONE PERFORMANCE STANDARDS, REQUIREMENTS AND REPORTS. An Operator must meet the telephone response standards herein established. An Operator must keep separate records for each customer service phone number, reported and filed monthly (showing daily and weekly figures) with the Franchise Agency pursuant to Section Sixteen(a).
1. Under Normal Operating Conditions and during Normal Business Hours, the following standards shall be met no less than ninety percent (90%) of the time, measured quarterly for purposes of compliance:
 - (A) *Hold time:* Time for telephone answer shall not exceed (i) 60 seconds from the time the call is connected to the Operator's telephone system by its local exchange carrier to the time at which any automated response unit menu presents to the caller the option to speak to a Trained Customer Service Representative and completes the description of the keys the caller must press to exercise that option, or (ii) 30 seconds from the time at which a caller exercises the option to speak to a Trained Customer Service Representative in an automated response unit menu to the time at which the call is answered by a Trained Customer Service Representative.
If a call needs to be transferred, transfer time shall not exceed thirty (30) seconds.
 - (B) *Busy Signal:* Callers will receive a busy signal no more than three percent (3%) of the time.
 - (C) *Abandonment Rate* for incoming phone calls may not exceed 5%.
 2. An Operator must provide Reports and supporting documentation demonstrating its compliance with the requirements of this Section Five(c), pursuant to Section Sixteen.

SECTION SIX. Appointments For Service Or Installation

- (a) An Operator shall comply with all requirements of this Section Six. However, an Operator shall be liable for a violation of Section Six(a) through (d) only if, under Normal Operating Conditions, it fails to meet such standard for 95% of the total number of appointments, measured quarterly, where each appointment scheduled by the Operator for a time during the month counts as one appointment and each appointment scheduled for a time during the month that constitutes a missed appointment pursuant to Section Six(a)(2), for any reason, counts as one missed appointment.
1. In addition to any penalties or liquidated damages attached to such violations, an Operator shall compensate Subscribers for any missed appointments pursuant to Section Six(g), and any failure to so compensate a Subscriber shall constitute a separate violation of this Ordinance.
 2. A "missed appointment" is one in which the Subscriber is at the appointment address and the Operator's field personnel do not arrive within the appointment window the Subscriber was given when the appointment was made. Failure of an Operator to correctly enter the appointment into the Operator's work order logs, or Operator's subsequent changes in deployment of field staff, or deletion of the appointment from Operator records, shall not be grounds for Operator to claim it did not miss an appointment.
- (b) Unless otherwise requested by a Subscriber, an Operator shall perform all Subscriber-requested service calls, installations, and changes in service - including upgrades, downgrades, equipment changes, and disconnections - during Normal Business Hours. In addition to the requirements of this Section Six(b), an Operator may schedule appointments outside Normal Business Hours for the express convenience of a Subscriber, if so requested.
- (c) The appointment window for installations, service calls and upgrades/downgrades will either be
1. specific time, or
 2. the Subscriber's choice of any "appointment window" blocks established by the Operator. Such appointment window blocks shall not exceed four (4) hours.
- (d) Appointment Confirmations, Cancellations and Rescheduling
1. An Operator may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.
 2. An appointment may not be cancelled or rescheduled on the day of the appointment by service representatives or technicians who phone or arrive at a time outside the designated appointment window and find the Subscriber is not at home. An Operator may not satisfy its obligation to keep an appointment by appearing outside the appointment window given to the Subscriber.
 3. An Operator may not cancel or reschedule an appointment on the grounds that a Subscriber is not available during the appointment window until the Operator has made every reasonable effort to verify both over the phone and in person at the appointment location that the Subscriber or other authorized adult is not available at the appointment location within the appointment window or at the specific appointment time. Thus, an Operator may not cancel or reschedule an appointment until it has, within the appointment window:

- (A) Attempted to reach the Subscriber by telephone at the number specified by the Subscriber to verify that the appointment is still needed and the Subscriber or his representative is or will be at the appointment address to meet the technician. Such attempts must include letting the telephone ring at least six times. If the Subscriber's telephone is answered by a machine or service, the Operator must leave a message giving the time of the call and a separate or direct dispatch phone number or extension that the Subscriber may use to call back the Dispatchers to confirm the appointment, or request that it be rescheduled; and
 - (B) Attempted to reach the Subscriber at the appointment address. When an Operator's field personnel arrives for an appointment, such representative shall make every reasonable effort to verify that the Subscriber or an authorized adult is at the address, including:
 - (i) knock and use the doorbell to alert the Subscriber;
 - (ii) contact the building manager or custodian, if such a person is on-site;
 - (iii) look in the front and back yards so long as this can be accomplished without trespassing on Subscriber or other private property, or subjecting field personnel to physical danger (*e.g.*, dog attack).
 - (C) Upon verification in the field that the Subscriber is not at the address during the scheduled appointment time or window, field personnel shall leave a door tag or similar notice, with the identity of the person leaving the notice, the time that person determined the Subscriber was not at home, and a direct telephone number or extension the Subscriber may call to confirm or reschedule the appointment.
4. If an Operator's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted within the appointment window, and if the appointment must be rescheduled, it shall be at the earliest time that is convenient for the Subscriber, including later the same day.
- (e) At the time an appointment is scheduled, it shall be an Operator's standard practice to inform a Subscriber of its service procedures, required payments, any foreseeable delays, and phone or field verification procedures which are related to the appointment, including those circumstances in which the Operator may cancel the appointment. When an Operator offers a time or appointment window to a Subscriber, the Operator is responsible for ensuring that the time or window is actually available and for ensuring that the Operator's records and work order accurately reflect the information given to the Subscriber.
 - (f) Emergency service calls and service capability enabling the prompt location and correction of Outages or substantial system malfunctions shall be available twenty-four (24) hours a day, seven (7) days a week.
 - (g) A Subscriber who experiences a missed appointment shall receive remedies pursuant to Exhibit A, unless the Operator and the Subscriber agree on a different remedy. However, these remedies shall not apply in cases where unusual physical conditions make it impracticable to keep the appointment, if the Operator notifies the Subscriber promptly (in advance if possible, and otherwise as soon as practicable thereafter) and offers to reschedule the appointment.
 - (h) An Operator is required to document all Subscriber appointment dates and times, including those scheduled and completed, as well as those missed, cancelled, or rescheduled for any reason. If someone other than the Subscriber calls an Operator to cancel or reschedule an appointment, the Operator shall record such Person's name and asserted relationship to the Subscriber
 - (i) The Franchise Agency shall have the power to adjust, settle and compromise disputes and to resolve complaints against a Grantee if a Subscriber demonstrates that s/he was available at the appointment location when the Operator failed to keep the appointment. The Franchise Agency may require an Operator to produce Records so that the Agency can ascertain compliance with this Section. Such Records may include daily reports for all appointments kept, made, cancelled or rescheduled by Operator, individual work order and appointment information, or other Operator Records reasonable to ascertain the facts relating to a particular situation or time period.

SECTION SEVEN. Installations and Reconnections

- (a) Under Normal Operating Conditions, installations must be completed within seven (7) business days after an order is placed, unless the Subscriber asks for a later date. The Operator may require advance payment of the installation fee and the first month's service charges. Installations which require more than one hundred twenty-five (125) feet of drop cable from the tap, or which would occur in buildings not wired for cable service, may take longer than seven (7) business days. In such cases, the Operator shall provide the Subscriber and/or the Agency with a written explanation and a proposed schedule for installation, but it shall be completed within sixty (60) days in any case.
- (b) Section Seven(a) shall not apply if the service or product requested by the Subscriber is not generally available from the Operator in the Subscriber's area (for example, if an upgrade necessary to provide the service has not yet been completed in that area).

- (c) Reconnections due to erroneous disconnections based on Operator's billing or technical errors must be completed at no charge the same day as the Subscriber notifies the Operator of the disconnection to the extent reasonably possible, but in any event within twenty-four (24) hours. The Subscriber must be provided a credit for time out of service.
- (d) Reconnections after a disconnection attributed to non-payment of bills must be completed within seven (7) business days after payment has been received by the Operator. In such instances only, Operator may require that payment by check has cleared Subscriber's bank before the payment is deemed received by the Operator.
- (e) Installations shall not be considered completed, nor may a Subscriber be billed for services, until all services and equipment the Subscriber is told would be installed as part of that installation are in full working order.
- (f) A building owner's preference as to the point of entry into a building shall be observed whenever feasible. Runs in building interiors shall be as unobtrusive as possible and outlets located for the convenience of the Subscriber. The Operator shall use due care in the process of installation and shall repair or restore any damage to the Subscriber's property caused by said installation work. Such repair or restoration shall be undertaken as soon as possible after the damage is incurred, shall be subject to reasonable Subscriber approval of the corrective action and shall be completed within no more than thirty (30) days after the damage is incurred, unless this is not reasonably possible, in which case it shall be completed as soon as possible. Should such repair or restoration not be completed within the thirty-day period, the Operator shall notify the Franchise Agency and the Franchise Agency shall have authority to review disputes between an Operator and Subscribers as to such damage and to require reasonable corrective action by an Operator.
- (g) The provisions of Section Six regarding appointments shall apply, without limitation, to appointments for installations.

SECTION EIGHT. Service and Repair Calls

- (a) When a Subscriber requests a service appointment or repairs for a problem with cable service, or the need for repairs otherwise becomes known to an Operator:
 - 1. Any Service Interruption (including loss of video and audio signal, or "no picture/no sound") on one or more channels must be responded to promptly and fully repaired within 24 hours, including provision of any necessary working equipment and arrival of another service technician qualified to repair the problem if the first technician cannot.
 - 2. Work on all other requests for service or repair must begin by the first business day after the Subscriber reports the problem to the Operator, and must be completed within 72 hours of the Subscriber's initial request.
- (b) Repairs or maintenance work not completed, or referred to another technician, by the original technician responding to a request for repair or service call shall be resumed by the Operator within 24 hours of the original service call
- (c) Repairs or corrective action not requiring Operator to enter the interior of Subscriber premises shall not require a Subscriber to make an appointment, shall not require the Subscriber to be available on-site, and shall not be delayed on account of the Operator's inability to contact the Subscriber. Such repairs shall also be completed within the deadlines specified above.
- (d) With respect to deadlines specified in this Section Eight:
 - 1. an Operator shall complete the work in the shortest possible time where the work could not be completed in the time periods specified herein even with the exercise of due diligence.
 - 2. The requirements of Section Eight(a) shall not apply during periods outside of Normal Operating Conditions. Such periods must be documented by the Operator to the reasonable satisfaction of the Franchise Agency.
 - 3. Failure of an Operator to accurately and timely locate or move underground plant upon request by any authorized Person shall not be cause for a waiver of the 24- and 72-hour requirements for repairs.
- (e) Except as applicable law requires, no charge shall be made to a Subscriber for a service appointment or repairs necessary to correct a problem with cable service, unless it can be documented that the problem was caused by the Subscriber.
- (f) Credits for Service Interruptions
 - 1. An Operator shall automatically provide a credit or refund whenever the Operator is aware that a Subscriber has not received service for which the Subscriber has paid for four hours or more.
 - 2. The amount of the credit shall be based on the severity or duration of the problem and the channels affected, but shall not be less than one-half day's cable rate.
 - 3. A credit under this Section Eight(f) shall not be required where (i) the Service Interruption is part of a planned and approved Outage for a limited period that is necessary for plant upgrades, maintenance, repair, or required testing; or (ii) the Operator shows that the Subscriber caused the Service Interruption.

4. However, a Subscriber is entitled to a full refund for a pay-per-view event that the Subscriber ordered from the Operator that is interrupted by a Service Interruption.
 5. A credit under this Section Eight(f) shall be applied upon a Subscriber's reasonably prompt request. Such credit shall also be applied without a Subscriber's request in any case where the Operator can identify the affected Subscribers. Credits are not required, however, when the Operator can demonstrate that the Subscriber seeks a refund for outage or impairment which the Subscriber has caused.
- (g) The Franchise Agency is authorized to adjust, settle and compromise disputes and to resolve complaints against a Grantee with respect to service and repair calls.
- (h) The provisions of Section Six regarding appointments shall apply, without limitation, to appointments for service and repairs.

SECTION NINE. Disconnections & Downgrades - Involuntary

- (a) Disconnection for Non-Payment
1. No Subscriber may be disconnected for non-payment other than at a time when Trained Customer Service Representatives with authority to cancel the disconnection are available for the Subscriber to contact by telephone.
 2. No Subscriber may be disconnected for non-payment if the Subscriber has informed the Operator or the Franchise Agency of a billing dispute or lost payment, until a reasonable period has elapsed for the Operator or the Franchise Agency respectively to resolve such billing dispute or lost payment and, if necessary, for the Subscriber to submit a replacement payment.
 3. No Subscriber may be disconnected for non-payment due to an Operator's failure to timely or correctly post payments.
 4. No Subscriber may be disconnected for failure to pay a portion of a bill attributable to services delivered after the "stop bill date" as that term is used in Section Ten(a).
 5. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made at Operator's office or received by the Operator at its office before the date scheduled for disconnection, including the last business day before the scheduled disconnection. It is the Operator's responsibility to monitor such payments and cancel work orders for disconnections.
 6. No Subscriber may be disconnected by an Operator for non-payment less than twenty-five (25) days after the original due date of a delinquent balance, or less than eight (8) days after the Operator sends (by first-class mail) written or telephone notice of the intent to disconnect, whichever is later.
- (b) Procedure for Involuntary Disconnection
1. Before a Subscriber may be disconnected, the Operator must give prior notice by at least two (2) of the following methods, each at least five business days prior to disconnection:
 - (A) messages in bold or large type on current bill;
 - (B) postcards, other mailings, or prominent bill stuffers;
 - (C) phone call to the Subscriber, or message left on a telephone answering machine.
 2. If an Operator initiates a disconnection at the Subscriber's location, the technician performing the disconnection must first attempt to reach the Subscriber on-site by knocking or ringing at the front door or looking in the backyard to inform the Subscriber about the pending disconnection. If the Subscriber is not present, but the premises are in the care and control of another Person, the Operator's representative shall allow such Person to attempt to contact the Subscriber prior to the disconnection. If such Person contacts the Subscriber, the Operator's representative shall speak to the Subscriber by phone and attempt to arrange for payment of the overdue amount or a resolution of the matter prior to starting the disconnection.
 3. If the Subscriber pays the outstanding balance for current period services at the time Operator attempts a disconnection at the Subscriber's premises, the Operator shall not disconnect the Subscriber.
 4. Disconnections for non-payment which are made at the Subscriber's location when the Subscriber is not home must be accompanied by a written notice, such as a door tag, informing the Subscriber that a technician has made changes to the service and providing an Operator telephone number and customer service location address so that the Subscriber may contact the Operator for further information. Disconnections made by computer require the Operator promptly to mail information to the Subscriber containing the same information and describing the

amount of payment in arrears as of the disconnection date and applicable reconnection charges and procedures.

- (c) **Forms of Payment:** An Operator may reasonably specify forms of payment that are acceptable to avoid disconnection (such as cash, checks, money orders or credit card payments) based on the Subscriber's payment history, security issues in the field, or other criteria.
- (d) **Disconnection Due to Signal Leakage**
1. An Operator may disconnect a Subscriber that causes signal leakage in excess of federal limits.
 2. An Operator may effect such disconnection without advance notice, provided that Operator shall first attempt to contact the Subscriber on-site about the problem.
 3. If an Operator disconnects a Subscriber due to signal leakage, the Operator's representative must leave a door tag with an explanation of the problem and a telephone number to call.
 4. Once the problem is corrected, the Operator shall reconnect the Subscriber at no charge. The Subscriber shall be eligible for appropriate credits pursuant to Section Eight(f)5.
 5. For purposes of this Section Nine(d), use of FCC-approved navigation devices does not in and of itself constitute signal leakage.
 6. An Operator must maintain dated, address-based incident logs of all disconnections attributed to signal leakage, including detailed description of exact location at which the leakage reading is strongest.
- (e) **Other Conditions:** Nothing in this Ordinance is intended to prevent an Operator from disconnecting, delaying, limiting or denying cable service to any Person who
1. Causes damage to the Operators cable system or equipment;
 2. Threatens the safety of an Operators field technicians in the course of their duties;
 3. Illegally receives cable services for which that Person has not paid;
 4. Attempts to order Premium or Pay-Per-View Service after that Subscriber has chronically failed to pay for such services in the past;
 5. Repeatedly attempts to render payments from checking accounts with insufficient funds.

If an Operator disconnects, delays, limits or denies cable service to a Subscriber pursuant to this Section Nine(e), the Operator will give written notice to the Subscriber of the reason and of the Subscriber's right to contact the Franchise Agency. An Operator must maintain copies of such written notice to the Subscriber in its files.

- (f) **Reconnection**
1. After a permissible disconnection for nonpayment, the Operator shall reinstate service within seven (7) business days after payment by the Subscriber of all outstanding charges in full, subject to a Subscriber's rights with respect to billing disputes or lost payments under Section Nine(a)2.
 2. The Operator is not required to reconnect aSubscriber with an undisputed outstanding balance unless extenuating circumstances are applicable in the judgement of the Operator and the Franchise Agency, after joint consultation.
 3. After a disconnection, delay, limitation or denial for cause as described in Section Nine(e) above, an Operator is required to restore service only after the Subscriber has provided adequate assurance that s/he has ceased, and will not resume, the practices which led to the disconnection, and paid all proper fees and charges, including any reconnection fees or amounts owed to the Operator for damage to its Cable System or equipment.

SECTION TEN. Disconnections & Downgrades - Voluntary

- (a) A Subscriber may order a disconnection or downgrade of service or equipment at any time and may select any business day occurring 24 hours or more after ordering such disconnection or downgrade, as the date on which the services will end (the "stop bill date").
- (b) As long as the Subscriber reasonably cooperates with the Operator's removal of any canceled converters or similar equipment from the Subscriber's premises:
- 1 the Operator shall promptly disconnect or downgrade any Subscriber as of the "stop bill date";
 - 2 the Operator shall not impose a charge for canceled services which are delivered after the "stop bill date";

- 3 the Operator shall not charge fees for equipment after the “stop bill date”;
 - 4 Unless the Subscriber requests otherwise, removal of charges, refunds or credit amounts will be applied to the account as of the “stop bill date”, regardless of when the disconnection or downgrade occurred in the field;
- (c) While Subscribers may be asked to deliver such equipment to the Operator’s office, they shall not be required or forced to do so as a condition of refunds, credits or return of deposits. A Subscriber may only be held liable for unreturned equipment if, within two weeks of disconnection, or by the last date the Subscriber occupies the premises (whichever is earlier):
1. the Subscriber refused an appointment for equipment pickup during a specified appointment window;
 2. the Subscriber failed to keep such appointment or failed to return such equipment when visited by the Operator;
or
 3. the Subscriber could not be contacted by the Operator for a period of five business days.
- (d) Subscribers may not continue to be charged for services or equipment due to Operator delays in completing disconnections or downgrades or equipment removal after the “stop bill date”.
- (e) Any charges for services or equipment with a “stop bill date” which is seven or more business days prior to the Subscriber’s next billing date may not appear on the Subscriber’s next bill.
- (f) Subscribers may not be charged late fees, involuntarily disconnected, or otherwise penalized for excluding from their payments amounts billed for canceled services after the “stop bill date”.
- (g) Following the “stop bill date” for a full disconnection, the Operator must promptly issue a full or pro-rated refund check for any pre-paid monthly charges .
- (h) No charge may be imposed on a Subscriber for any full disconnection, and downgrade fees for partial cancellation of service must comply with the requirements of federal law and local rate orders.
- (i) Full refunds of service and installation charges shall be given for downgrades or disconnections requested in accordance with any “Money Back Guarantee” conditions established in promotional campaigns for any tier or other cable service. Downgrade fees may not be charged if such services are canceled within such promotional windows. If an Operator is fined by another entity for a failure to provide such a refund or for charging such a fee, the Operator shall not be subject to a penalty or liquidated damages for that event pursuant to this Section Ten(i).
- (j) Subject to applicable federal law, Subscribers may downgrade or disconnect at no charge within 30 days after they receive a bill with a rate increase for that service or equipment. For purposes of this Section Ten(j), “rate increase” shall include (but not be limited to) unilateral price increases to all Subscribers, discontinuation of special price promotional packages held by a particular Subscriber, and changes in Premium service prices at the end of a promotional period. This Section Ten(j) shall not apply to a rate increase where a Subscriber has agreed to pay for a service or equipment at a normal price after a period charged at a lower promotional rate, and the rate increases to the normal price in accordance with that agreement.
- (k) Operators must notify Subscribers who have fully disconnected service of the terms and conditions under applicable law regarding both parties rights with respect to Subscriber premises cable service wiring. Except as otherwise provided under applicable law or agreement binding on a building owner, any such building owner may require an Operator to promptly remove the Operator’s wiring from the owner’s building at no charge to the building owner.

SECTION ELEVEN. Outages

- (a) An Operator shall take timely measures to post appropriate messages, including areas or Zip codes affected, on its telephone system automatic response unit to notify Subscribers of any Identified Outages. Such messages should also provide instructions for Subscribers whose converters or navigation devices may not be functioning as a result of the Identified Outage. Periods of natural disasters are not included in this requirement.
- (b) Within one (1) hour after an Identified Outage, service technicians will respond and use all available means to correct the Outage in the shortest possible time.
- (c) Operator will maintain reports on the cause, area and duration and repair of all Outages.
- (d) The requirements of this Section Eleven are in effect 24 hours per day, 7 days a week.
- (e) An Operator may intentionally interrupt service only for good cause and the shortest possible time, including interruption for system upgrade, repair and maintenance, for emergencies or to the extent necessary to fix an affected Subscriber’s problem. Routine maintenance shall occur at times that affect the fewest Subscribers, generally between 2 am and 6 am. An Operator shall notify the Franchise Agency no less than twelve (12) hours prior to a planned Service Interruption. In

addition, an Operator shall post override notices on all its system's channels to advise Subscribers prior to planned Service Interruptions.

SECTION TWELVE. Changes In Services and Rates

- (a) Before an Operator unilaterally alters equipment, the Basic Service Tier, a Cable Programming Tier, another Tier, or any other cable service, or the rate for any such equipment or service, it must provide the Franchise Authority and Franchise Agency sixty (60) days advance written notice. The Operator shall also provide Subscribers with thirty (30) days advance written notice by any reasonable means and explain the substance and effect of such alteration. Such notice is required for all regulated and unregulated rates for any and all services, to any and all classes of Subscribers, including without limitation governmental and educational Subscribers; commercial account Subscribers; and Subscribers of optional tier or other cable services.
- (b) Changes not within the control of the Operator are subject to notice as soon as reasonably possible. Operator must also notify Subscribers at the time the alteration is made of their right within thirty (30) days after the alteration to elect to continue receiving, or to cancel at no charge, any service so altered, or combination of services which includes an altered service. Such notice must be clear and obvious.
- (c) Negative option billing is prohibited except to the extent that federal law specifically provides that Operators are permitted to make alterations by negative option. For purposes of this Section Twelve(c), "negative option billing" shall be defined as charging a subscriber for any service or equipment that the Subscriber has not affirmatively requested by name. The Franchise Agency shall have the power to adjust, settle and compromise disputes and to resolve complaints. The Operator shall have the burden of proof with respect to any issues regarding negative options. Subscribers may not be charged an upgrade or downgrade fee in order to receive, block or cancel services changed by an Operator. Notwithstanding the foregoing, acts by an Operator that federal law has deemed permitted under federal law shall not be considered negative options for purposes of this Section Twelve(c).
- (d) If an Operator plans to provide a free Premium Channel, the Operator shall, no later than ten (10) days before such Premium Channel is offered without charge, notify all Subscribers of its plans including the time periods involved, a general description of the nature of the content of the offered Premium Channel, and the Subscriber's right under this Ordinance to have the channel blocked at no charge. For purposes of this Section Twelve(d) only, "Premium Channel" shall mean any pay service offered on a per-channel or per-program basis.
- (e) Rates for services, and equipment are subject to all applicable federal, state, and local laws and rules. If an Operator implements rates that exceed rates established by City rate orders, it must notify Subscribers that such rates are in dispute and (where appropriate) are under appeal.
- (f) An Operator must notify the Franchise Agency regarding any changes in rates or billings or services affecting governmental and educational Subscribers in writing no less than ten (10) business days in advance of the actual change or notice to governmental or educational Subscribers of such change, whichever comes first. The Franchise Agency shall have authority to determine if such charges comply with this Ordinance and the terms and conditions of any other applicable law or contracts.

SECTION THIRTEEN. Notices - Written and Oral

- (a) An Operator shall comply with all notice provisions established by applicable law or in its franchise agreement.
- (b) An Operator shall provide the following written information to each Subscriber on each of the following topics at the time of installation and at least annually thereafter, and at any time upon request. Copies of all such materials provided to Subscribers shall also be provided to the Franchise Agency.
 - 1. description of products and services offered, including prices and options for cable services, associated equipment and installation charges, and conditions of subscription to programming and other services and facilities;
 - 2. description of the Operator's installation and service maintenance policies, delinquent Subscriber disconnection and reconnection procedures, and any other of its policies applicable to its Subscribers;
 - 3. instructions on how to use the services and equipment, including the capabilities and limitations of such equipment;
 - 4. instructions for how to place a service call;
 - 5. description of the Operator's billing and complaint procedures, and the address and telephone number of the Franchise Agency office responsible for receiving Subscriber complaints;
 - 6. copy of the service contract between the Operator and Subscriber, if any;
 - 7. notice regarding Subscriber's privacy rights pursuant to applicable law;

8. notice of the commercial availability of universal remotes and other compatible equipment clearly indicating that a list of specific brands and models shall be provided to any Subscriber upon request;
 9. The Operator's customer service telephone numbers; the addresses and hours of any of the Operator's customer service locations in the City; and the address and telephone number of the Franchise Agency.
- (c) All written notices to Subscribers regarding changes in operator procedures and practices affecting Subscribers in the City shall be provided to the Franchise Agency prior to printing and distribution. An Operator shall make a good-faith effort to provide copies of such notices early enough that the Agency, if it chooses, can review and comment on them. An Operator's distribution of notices containing information that is contrary to applicable law, is fraudulent, or would reasonably be expected to mislead Subscribers as to their rights, is a violation of this Ordinance.
- (d) Every Operator's promotional materials, announcements, advertising of service, and oral or written sales presentations to Subscribers shall conform to applicable laws governing such advertising and, to the extent to which price terms are presented in such materials or presentations, shall clearly and accurately disclose such price terms.
- (e) In addition to (but not in duplication of) any notice required under Section Twelve(a), Subscribers shall be notified in writing of any changes in rates, programming services or channel positions, or any significant changes in any other information required to be provided by this section. An Operator may also provide additional notice by any other means, such as announcement on its Cable System. These notices shall be made:
1. as soon as possible when the change is out of the Operator's control; and
 2. in accordance with applicable federal, state and local law, including this ordinance, when the change is within the Operator's control.
- (f) Each Operator shall maintain a public file containing all notices provided to Subscribers under this Ordinance as well as promotional offers made to Subscribers. Copies of all such notices, rate cards, promotional or special offers sent to Subscribers, and any copies of blank agreements used with Subscribers, shall be promptly filed with the Franchise Agency.
- (g) Notices to Subscribers, including but not limited to notices of rate and service changes, that are published solely in the legal section of local newspapers do not constitute "reasonable means" as that term is used in this Ordinance or in 47 U.S.C. § 552(c) as applied in the City.

SECTION FOURTEEN. Billings, Charges and Credits

- (a) Bills shall be clear, concise and understandable.
1. Appropriate office addresses and phone numbers for billing inquiries or disputes shall be clearly marked on each bill.
 2. Bills shall be fully itemized and clearly delineate all activity during the billing period, with an itemization of at least the following: basic tier charges, any other tier charges, premium charges, pay-per-view charges, optional charges, payments, credits, rebates, late fees, and pro-rated amounts for service upgrades, downgrades and disconnections. An Operator's first billing statement after new installation, reconnection or service change shall be pro-rated to reflect the service period. Any unusual billing debits, credits, or changes in service must be clear and understandable. The Franchise Agency will work with an Operator at the Operator's request to accommodate the Operator's reasonable space limitations to ensure that the results are clear and understandable.
 3. An Operator's billing statement must show a specific payment due date. Bills shall clearly and conspicuously indicate the past due date and, if applicable, the action a Subscriber must take to avoid disconnection.
- (b) All Operators must take reasonable steps to ensure that Subscribers understand the terms and obligations of their subscriptions in advance.
1. Promotional materials must prominently specify the periods for which any special prices or discounts remain in effect and the prices to which they return at the end of such periods (unless they return to a price the Subscriber is currently paying).
 2. Prior to upgrades or changes in a Subscriber's service package, an Operator's written materials and/or oral presentation shall fully disclose to the Subscriber whether the Subscriber is able to cancel the upgraded services and voluntarily downgrade to the same package of service at the same price as before the upgrade or change.
 3. Prior to upgrades or changes in a Subscriber's service package, an Operator's written materials and/or oral presentation shall fully disclose to the Subscriber any charges or penalties for downgrading or removing services at a later date.
 4. Subject to applicable law, at the end of any special price offer or promotional period, Subscribers shall have the right to cancel any Cable Services with no downgrade charge.

In the case of pay-per-view or pay-per-event programming, promotional materials must clearly and accurately disclose all price terms. In the case of telephone orders, an Operator shall take appropriate steps to ensure that price terms and restrictions are clearly and accurately disclosed to potential Subscribers before the order is accepted. Operator shall provide the Franchise Agency with verification on a quarterly basis that the requirements of this paragraph are being met.

- (c) Subscribers must have adequate time to pay bills before imposition of late fees or penalties for non-payment. Any balance not received within the time period after the due date specified in Section Fourteen(c)2 below may be assessed a processing charge (late fee) to the extent not in conflict with applicable federal or state law.
 - 1. Subscribers must have a minimum of eighteen (18) days between the date the Operator mails the bill by first-class mail and the due date on the bill. Due dates generally may not be earlier than the tenth day of the billed period.
 - 2. An Operator shall provide Subscribers a grace period of an additional five (5) business days after the due date before the Operator may impose a late fee for nonpayment. Late fees may not actually be applied to any account until the billing cycle cutoff date on which all posted payments and charges for the following months bill are applied.
- (d) Subscribers will not be responsible for late fees resulting from delays in Operators billing system, payment collection or posting practices or for any failure by an Operator to timely or correctly bill the Subscriber or to properly credit the Subscriber for timely payment made.
- (e) Credits for erroneous late fees will be applied to all affected accounts automatically by the Operator prior to generating the next Subscriber bill.
- (f) Late fees may not exceed the lesser of (1) any state statutory limits or (2) any court-ordered limits.
- (g) No Subscriber's billing cycle shall be changed arbitrarily. An Operator shall use its reasonable best efforts to accommodate one-time requests for specific billing cycles by Subscribers on fixed incomes.
- (h) Disputes about billings will be settled by the Franchise Agency in accordance with this Ordinance. No Subscriber may be disconnected for non-payment except as provided in Section Nine(a)2 if the Operator has written notice of a billing dispute or lost payment. The Agency will evaluate repeated complaints by individual Subscribers for legitimacy, to avoid the complaint process being used inappropriately.
- (i) Credits must be issued for Outages pursuant to Section Eight(f).
- (j) An Operator may require payment by credit or bank cards for Pay-per-View orders, once the outstanding monthly balance has exceeded an amount deemed appropriate by the Operator.
- (k) Operator must address Complaints about billings within five business days after the complaint is received. Credits for service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

SECTION FIFTEEN. Deposits, Advance Payments, Refunds and Credits

- (a) An Operator may require payment of undisputed past due amounts prior to installation or reconnection. An Operator may require at time of installation an advance payment equal to one month of services ordered plus the cost of the installation. An advance payment for installations or other services not received by a Person must be refunded within 35 days. Any Subscriber deposit required by an Operator shall bear interest at seven percent per annum. Upon disconnection, all equipment deposits, with interest, shall be returned to the Subscriber within 35 days after all Operator equipment is returned and all other outstanding financial obligations of the Subscriber to the Operator have been met.
- (b) Credits for service shall be issued no later than the Subscriber's next billing cycle after determination that a credit is warranted.
- (c) Refunds or reimbursements rather than credits, including any monetary credit resulting from a missed appointment, shall be issued to Subscribers who:
 - 1. are no longer receiving Cable Service for which they have already paid;
 - 2. pre-paid for installations or upgrades which were not completed for any reason if the Subscriber is no longer receiving Cable Service from the Operator;
 - 3. experience damages or theft as a result of Operator or subcontractor actions in connection with installation or service.
- (d) Operator Checks for refunds and reimbursements shall be issued and mailed to the remitter of payment within thirty-five (35) business days:

1. after a request for refund or reimbursement is made by the Subscriber/remitter subsequent to the event giving rise to the need for refund or reimbursement; or
2. if there is a dispute, after determination that refund or reimbursement is warranted or ordered by the Franchise Agency.

SECTION SIXTEEN. Reports and Documentation

- (a) An Operator shall submit to the Franchise Agency fifteen (15) days after the end of each month, in a form reasonably acceptable to the Agency, the following reports. These reports shall distinguish on a preliminary basis between Normal Operating Conditions and any periods not under Normal Operating Conditions.
 1. Telephone response statistics that provide documentation of Operator's performance pursuant to Section Five(c) of this Ordinance, including but not limited to Operator's own statistics and measurements and any independent third party studies made available to the Operator by its telephone service provider during the applicable time period. Separate statistics shall be provided for Normal Business Hours and for periods outside Normal Business Hours.
 2. A summary of installations, indicating the number for each day completed, cancelled and rescheduled, and the reasons for same.
 3. A summary of service calls, including the number and nature of the calls received and an explanation of the causes and dispositions of such calls.
 4. A report reflecting the credits issued for missed appointments.
 5. The total number of Subscribers.
 6. A summary of Identified Outages, including each outage's date, location, cause, and approximate duration and area affected.
- (b) The Franchise Agency may, upon reasonable prior notice, require an Operator to submit the following additional Operator reports, records or documentation reasonably necessary to verify compliance with this Ordinance:
 1. complete list of all recorded Subscriber Complaints to the Grantee and measures taken to resolve them;
 2. Subscriber location service call and installation records/work orders, including but not limited to the date and time of any visits to a subscriber location scheduled or rescheduled by the Operator;
 3. signal leakage logs and incident reports;
 4. technical records regarding performance related to service under this Ordinance;
 5. Operator's subscriber payment and posting documentation, which may include information maintained by its billing service.
- (c) Upon the Franchise Agency's request, an Operator shall also make all other supporting Records for reports, and for compliance with this Ordinance, available to the Franchise Agency at a location within the St. Louis metropolitan area.
- (d) Any report or Record required to be submitted to the Franchise Agency pursuant to this Ordinance shall be forwarded or made available to the Franchise Agency or, if so directed by the Franchise Agency, to the Franchise Authority.
- (e) An Operator's failure to collect the necessary information shall not be a defense for any inaccuracy or incompleteness in the Operator's reports required in this Section Sixteen.

SECTION SEVENTEEN. Privacy

The following provisions with respect to Subscriber privacy are deemed to be consistent with applicable federal and state law as of the date of enactment of this Ordinance. This provision shall not be deemed to waive any Operator's right to contest this provision based on any change in federal or state law after that date of enactment.

- (a) If the Franchise Agency requests aggregate Subscriber information, without personally identifiable information, pursuant to this Ordinance, an Operator shall not refuse to provide such information on grounds of Subscriber privacy.
- (b) If a Subscriber provides personally identifiable information to the Franchise Agency in order to request the Franchise Agency's assistance, an Operator shall not refuse on grounds of Subscriber privacy to discuss such information, or the Subscriber's concerns related to that information, with the Agency.
- (c) To the extent a Subscriber's prior written or electronic consent may be required by applicable law, if the Subscriber

provides such consent either directly or via the Franchise Agency, the Operator shall not refuse on grounds of Subscriber privacy to provide that Subscriber's personally identifiable information to the Franchise Agency, to the extent consented to by the Subscriber.

- (d) Prior consent delivered to the Operator by facsimile (by way of illustration and not limitation) shall be deemed sufficient to constitute prior written or electronic consent for purposes of this Section Sixteen(e) and 47 U.S.C. § 551.
- (e) An Operator shall not object to disclosing Subscriber information to the City if it has provided the Subscriber the opportunity to prohibit or limit such disclosure in accordance with 47 U.S.C. § 551(c)(2)(C)(i), unless to do so would expressly violate other applicable law.

SECTION EIGHTEEN. Mobility-Limited Subscribers

- (a) Upon request of mobility-limited Subscribers, an Operator shall arrange for delivery, pick-up or exchange or replacement of converters or other Operator equipment at the Subscriber's address, or by a satisfactory equivalent such as provision of a pre-paid postage mailer.
- (b) An Operator shall make special arrangements to accommodate Subscribers who may be unable to answer a door or telephone in response to a request for an appointment. Work orders shall indicate any special instructions or directions necessary to accommodate a mobility-limited Subscriber.

SECTION NINETEEN. Parental Control

- (a) An Operator shall make available to any Subscriber upon request the options of blocking both video and audio portions of any channel(s) of video programming entering the Subscriber's home. This control shall be provided at no charge, except to the extent that federal law specifically provides that the Operator must be permitted to charge a Subscriber, as well as a reasonable security deposit for the use of any device provided by the Operator.
- (b) All Subscribers must be notified of the availability of blocking devices on an annual basis.

SECTION TWENTY. Exclusive Contracts

No Operator shall require the exclusive right to serve a Subscriber, Person or location as a condition of offering cable service or extending a Cable System.

SECTION TWENTY-ONE. Administration, Enforcement and Penalties

- (a) Administration
 - 1. This ordinance shall be administered on behalf of the City by the Franchise Agency.
 - 2. An Operator shall be responsible for all of its agents, subcontractors, and employees, with respect to the Operator's compliance with this Ordinance.
 - 3. All notices of deficiencies, non-compliance, and changes in requirements issued by the Franchise Agency shall be in writing.
- (b) Penalties
 - 1. Penalties imposed pursuant to this Section shall not exceed \$500 per violation.
 - 2. Each day that a violation continues shall constitute a separate violation of this Ordinance for purposes of calculation of penalties.
 - 3. The following procedure shall apply in assessing penalties for violations of customer service standards that are measured on a quarterly basis:
 - (A) If the Operator does not meet the prescribed standard (for example, the 90% standard for telephone answering) in a given calendar quarter (a "noncompliant quarter"), it shall pay a penalty in the amount of twenty dollars (\$20) for every day in the noncompliant quarter. In addition, the Operator will thereafter be on notice and subject to penalties if it fails to meet the standard involved for subsequent monthly periods until it meets the standard for a quarter (a "compliant quarter").
 - (B) At the end of the month following a noncompliant quarter (for example, April following a noncompliant first quarter), the Operator shall report to the City the statistics pertaining to the standard for that month. If the Operator fails to meet the standard for that month, the Operator shall pay penalties in the amount specified in Section Twenty-one(b)3(C). The same report shall be made, and monthly measurement continued, for subsequent months until a compliant quarter occurs.

- (C)
- (i) If the Operator does not meet the prescribed standard in the month immediately following the initial noncompliant quarter (the "test month"), then its monthly penalty shall be \$100 for every day in the test month; \$200 for every day in the second noncompliant month; and \$500 for every day in any subsequent noncompliant months.
 - (ii) If the Operator meets the prescribed standard in the test month, then its monthly penalty shall be \$100 for every day in the first subsequent noncompliant month, and \$300 for any subsequent noncompliant months to a compliant quarter.
- (D) After a compliant quarter the Operator shall return to quarterly measurement and penalty determination, until another non-compliant quarter occurs, in which event the procedures and penalties described in Section Twenty-one(b)3(B) and Section Twenty-one(b)3(C) shall apply.
- (E) Penalties of twenty dollars per day for a noncompliant quarter pursuant to Section Twenty-one(b)3(A) shall not be assessed if the Operator (i) meets the prescribed standard during the subsequent test month and (ii) meets the prescribed standard in the quarter (as a whole) following the noncompliant quarter.
- (F) Thus, for example, if the first quarter is noncompliant, and the Operator fails the relevant standard for April, the Operator pays \$1,800 for the first quarter (assuming it is not a leap year); pays \$3,000 (30 days x \$100) for April; and continues to report the relevant monthly statistics for May and June. If May is also noncompliant, the Operator pays \$6,000 (30 days x \$200). Assume that June is compliant, and that the second quarter as a whole is also compliant. In that case, the Operator would be evaluated on quarterly statistics for the third quarter. Assume that the third quarter was again noncompliant, but the Operator succeeded in returning to compliance in October. The Operator would not be required to pay a penalty for the third quarter (because it met the prescribed standard in October), but would continue to be evaluated monthly for November and December. In these months, again due to the Operator's success in meeting the standard in October, the lower set of penalties specified in Section Twenty-one(b)3(C)(i) would apply: thus, noncompliance in November would result in a penalty of \$3,000 (30 days x the lower rate of \$100).
- (c) If a Grantee is fined for a violation of this Ordinance, such Grantee shall not be subject to liquidated damages pursuant to its Franchise Agreement for the same violation or act.
- (d) In order to enforce the remedies specified in this section, the Franchise Agency shall notify the City Counselor that an alleged violation of this Ordinance has occurred. Either upon such notice by the Franchise Agency, or on his or her own motion if the City Counselor in his or her discretion determines that there is a reasonable basis for the belief that a violation has occurred, the City Counselor may prosecute such violation pursuant to Missouri law.
- (e) Provided that fines imposed shall not exceed \$500 per violation, the City Counselor may authorize alternative enforcement proceedings by the Agency in lieu of the procedures set forth above. Such authorization shall be in writing, with notice to the Grantee involved. Such alternative enforcement procedures shall be as follows:
1. Hearing procedures.
 - (A) The Regulatory Section of the Franchise Agency shall issue a written notice of complaint/violation to an Operator, specifying the nature and time of the alleged violation and proposing a penalty consistent with this Section.
 2. In response to a notice issued under Section Twenty-one(e)1, an Operator may agree to pay the proposed penalty, or may contest such notice. An Operator may contest such notice by notifying the Communications Commissioner in writing within ten (10) business days after the Operator's receipt of the notice issued by the Regulatory Section. Such an Operator's Reply shall include the basis for the Operator's objection and any supporting documents the Operator wishes to have considered in reviewing the notice of violation.
 3. Within ten (10) business days after receipt of an Operator's Reply, the Communications Commissioner shall notify such Operator and the Regulatory Section of a date, time and place of a hearing on the matter, which date shall be not less than fifteen (15) and not more than forty-five (45) days from the date of such notification by the Communications Commissioner.
 4. The hearing shall be conducted as required by the Missouri Administrative Procedure Act, Ch. 536 RSMo, as amended (the "APA"), for a contested case.
 5. Not less than thirty (30) days following the conclusion of the hearing, the Communications Commissioner shall issue a written decision consistent with the APA, finding that the complaint/violation as stated in the notice is proven and imposing an appropriate administrative penalty, or modifying or dismissing the Regulatory Section's notice of violation. If the

Communications Commissioner does not issue such a decision within such thirty-day period, the Regulatory Section's notice of violation shall be deemed dismissed, provided that the Communications Commissioner may extend such period up to a total of 45 days.

- 6. Decisions of the Communications Commissioner pursuant to Section Twenty-one(e)5 are appealable pursuant to the APA.

(f) Hearing officers

- 1. In lieu of conducting a hearing himself, the Communications Commissioner may appoint a hearing officer to conduct any hearing pursuant to this Section and submit recommended findings of fact and conclusions of law to the Commissioner. If so, the Commissioner's notice of hearing shall so advise the Operator and the Regulatory Section within ten (10) business days of receipt of Operator's Reply, and shall advise the parties of the name and address of the hearing officer. Hearing Officers may, but need not, be attorneys, and may be appointed from any list of duly selected hearing officers maintained by any City department or agency.
- 2. Regulations. The Franchise Agency may issue regulations concerning enforcement procedures which are consistent with this Ordinance and applicable law. An Operator shall be provided written notice of and opportunity to comment on any such regulations prior to their applicability as to that Operator.

SECTION TWENTY-TWO. Severability

The provisions of this ordinance are severable. In the event any provision hereof is determined to be invalid, the remaining provisions shall remain in full force and effect.

SECTION TWENTY-THREE. Waiver Of Requirements

The Franchise Agency may, with the prior approval of the City Counselor's office, waive any material requirement under this ordinance for good cause shown as determined by the City Counselor's office and the Agency. Any such waiver must be in writing and explain in detail the reason for the waiver, and the Agency shall promptly report to the Board of Aldermen regarding any such waiver.

EXHIBIT A

SUBSCRIBER REMEDIES FOR MISSED APPOINTMENTS

- 1. For a missed service call appointment:

Each occurrence:	\$20 credit to Subscriber's account
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- 2. For a missed installation, upgrade or downgrade appointment:

First occurrence:	Installation fee waived (or \$20 credit if the installation was to have been free)
Subsequent occurrences:	\$20 credit for each to Subscriber's account
- 3. For new installations, if Subscriber subsequently requests cancellation of the order due to failure to complete

Prompt cash refunds to the payer for the full amount of pre-paid charges, plus a transferable coupon good in the Grantee's system in the City for one free installation and \$20 in free service, without expiration
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BOARD BILL #77

INTRODUCED BY ALDERMAN TERRY KENNEDY

An ordinance relating to certain television systems; repealing Ordinance 58462, as amended by Ordinance 64773, and Ordinance 64773; with definitions of terms; providing for the granting of franchises to construct, operate and maintain cable television systems within the City of St. Louis; providing procedures for the award of cable television franchises, and prescribing certain terms and conditions of such franchises; providing methods and standards for the regulation, operation and maintenance of cable television systems pursuant to franchises; providing penalties for violations; and regulating open video systems.

WHEREAS, the City's cable television regulatory ordinances date from the early 1980s; and

WHEREAS, the technology of cable television and other forms of video delivery to consumers has changed; and

WHEREAS, federal law regarding cable franchises has changed since the adoption of the City's cable television regulatory ordinances; and

WHEREAS, it is in the best interests of the City and of its residents to adopt new regulations of certain television systems;

and

BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:

SECTION ONE. Short title, code inclusion, and repealer.

- A. This Ordinance shall be made a part of the Revised Code of the City of St. Louis, and the sections of this Ordinance may be renumbered for such purpose.
- B. Ordinance 58462 as amended by Ordinance 64773, and Ordinance 64773, are hereby repealed.

SECTION TWO. Definitions and Rules of Construction.

- A. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein, unless the context clearly indicates that another meaning is intended.
 - 1. “Access” refers to the availability of channels or capacity on the cable system for non-commercial use by certain agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, for distribution of video programming or other programming services, including but not limited to the following types of Access.
 - a. “**Community Access**” means PEG Access in which an independent non-profit organization is the primary user and exercises editorial control over non-commercial programming content and other non-commercial services, developed on a non-commercial basis in conjunction with the local community and generally not subject to editorial control by the City, a Grantee, or other parties, except to the extent permitted under applicable law.
 - b. “**Educational Access**” means Access in which Schools are the primary users and exercise editorial control over non-commercial programming content and other non-commercial services.
 - c. “**Government Access**” means Access in which City governmental institutions or their designees are the primary users and exercise editorial control over non-commercial programming content and other non-commercial services.
 - d. “**PEG Access**” means Public, Educational, and Governmental Access collectively, as that term is commonly used in federal and local law, and over which a Grantee shall not exercise editorial control, except to the extent allowed by applicable law.
 - e. “**Public Access**” means Access in which individual members of the general public, community-based groups, and other organizations are the primary users on a non-commercial, non-discriminatory basis, and content of programming is generally not subject to editorial control by the City, a Grantee, or other parties, except to the extent permitted under applicable law.
 - 2. “**Access Channel**” means any channel, or portion thereof, designated for PEG Access purposes, or otherwise made available to transmit PEG Access programming or services.
 - 3. “**Affiliate**” of a Person means any Person that owns or controls, is owned or controlled by, or is under common ownership or control with, that Person.
 - 4. “**Agency**”: see “Franchise Agency”.
 - 5. “**Agreement**”: see “Franchise Agreement”.
 - 6. “**Application**”: see “Franchise Application”.
 - 7. “**Board of Aldermen**” means the City’s Board of Aldermen, created by Article IV of the City’s Charter as amended.
 - 8. “**Board of Public Service**” means the City’s Board of Public Service as constituted pursuant to the City’s Charter.
 - 9. “**Broadcast Signal**” means a federally licensed television signal transmitted over the air to a wide geographic audience.
 - 10. “**Cable Act**” means Title 47 of the United States Code, Title VI, 47 U.S.C. § 521 *et seq.*, as amended from time to time.
 - 11. “**Cable Operator**” means any Person or group of Persons (A) who provides cable service over a Cable System and directly or through one or more Affiliates owns a significant interest in a substantial portion of such Cable

- System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.
12. **“Cable Service”** means (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.
 13. **“Cable System”** means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the 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 and without connecting to a facility that uses any Public Rights-of-Way in the City; (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 (other than for purposes of 47 U.S.C. § 541(c)) to the extent that 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. 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.
 14. **“City”** means the City of St. Louis, a municipal corporation of the State of Missouri, organized and existing under its Charter and the constitution and laws of the State of Missouri.
 15. **“Connection”** (with regard to connections to buildings or Access facilities) means installation of fiber optic cable, coaxial cable, or other Cable System-related Facility through the outer wall of a building, leaving adequate excess Facility to permit further connection to other facilities, plant or cable within the building.
 16. **“Document”** or **“Record”** means written or graphic materials, however produced or reproduced, computerized data base information, maps, products of telephone recording or monitoring, or any other tangible record.
 17. **“Dwelling Unit”** means any building or portion thereof that has independent living facilities including provisions for cooking, sanitation and sleeping, that is designed for residential occupancy. Buildings with more than one set of facilities for cooking, and buildings that individually house residents but provide common cooking and dining facilities (such as senior citizen care facilities), shall be considered Multiple Dwelling Units (“MDUs”).
 18. **“Effective Date”** of a Franchise means the date on which a Grantee’s acceptance of its Franchise is certified as complete and consistent with this Ordinance and its franchise ordinance by the Agency and the City Counselor as more fully provided in Section Four hereof.
 19. **“Facility”** means any tangible component of a Cable System, without limitation.
 20. **“Federal Communications Commission”** or **“FCC”** is the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.
 21. **“Franchise”** means an authorization granted by the City pursuant to its Charter which permits the construction, operation and maintenance of a Cable System within the Franchise Area for the purpose of providing Cable Service, subject to the terms of this Ordinance and a Grantee’s Franchise Agreement.
 22. **“Franchise Agency”** means the Communications Division of the Department of Public Utilities of the City of St. Louis, its manager or his delegate, or any successor division or department thereto.
 23. **“Franchise Agreement”** means a contract entered into between the City and a Grantee, in accordance with the provisions of this Ordinance, that sets forth the terms and conditions under which a Franchise shall be exercised.
 24. **“Franchise Application”** means all documents, submissions, supplemental filings, letters and explanations in which a Grantee or applicant applies for a franchise to construct a Cable System.
 25. **“Franchise Area”** means that area under the jurisdiction of the City for which a Franchise is granted under the authority of this Ordinance. The Franchise Area may or may not be coterminous with the City.
 26. **“Grantee”** is a holder of a cable Franchise issued by the City pursuant to this Ordinance and a Franchise Agreement.
 27. **“Headend”** means any Facility for signal reception and dissemination on a Cable System, including cables, wires, satellite dishes, monitors, switchers, modulators, processors for television broadcast signals, equipment for interconnection of a Cable System with adjacent Cable Systems, interconnection of any separate networks that are part of the Cable System, and all other related equipment and Facilities.

28. “**Interconnection**” means provision by a Grantee of Facilities necessary to maintain a physical link between a Grantee’s Cable System and another network or networks, so that certain Cable Services of technically adequate quality may be sent to and received from other networks, including but not limited to PEG Access programming.
29. “**Major stockholder**” is an owner, directly or indirectly, of ten percent or more of the issued and outstanding voting stock of any corporation.
30. “**Minority group**” means a group of persons legally residing in the United States who are African-American, Asian-American, Native-American or Hispanic-American.
31. “**Open Video System**” means a system certified by the FCC as such pursuant to 47 U.S.C. § 573.
32. “**Permit**” means a revocable approval issued by the Board of Public Service to construct Facilities in Public Rights-of-Way, subject to terms and conditions established therein, or ancillary Permits such as excavation or street-blocking permits.
33. “**Person**” means any individual, firm, corporation, association, or other legally recognized entity.
34. “**Public Rights-of-Way**” means the surface and space above and below any public street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, alley, right-of-way, or public utility easement. It does not include such places that are now or hereafter permanently and unconditionally vacated by the City to a private Person.
35. “**School**” means (a) any parochial or accredited private primary, middle or secondary school and (b) any taxpayer-funded primary, middle or secondary school (excluding living facilities or Dwelling Units).
36. “**Subscriber**” means any Person who lawfully receives Cable Service from an Operator, including commercial as well as residential accounts, the City and its agencies in its capacity as a lawful recipient of such services.
37. “**Transfer**” shall have the meaning given that term in a Franchise Agreement.
38. “**User**” means a Person using all or part of a Cable System to produce or transmit video programming or other programming services, as contrasted with receipt thereof in the capacity of a Subscriber.

B. Rules of Construction

Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Ordinance:

1. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended, or, if not defined therein, in Chapter 47 of the Code of Federal Regulations, or, if not defined therein, their common and ordinary meaning.
2. Words importing the singular number include the plural number and vice-versa.
3. Words in the present tense include the future tense and vice versa.
4. The masculine gender includes the feminine gender and vice versa.
5. All references to particular sections are references to sections of this Ordinance.
6. The headings herein are solely for convenience of reference and do not constitute a part of this Ordinance nor do they affect its meaning, construction or effect.
7. The word “shall” as used herein is always mandatory and not directory, and the word “may” as used herein is permissive.
8. “Applicable law” shall include but is not limited to applicable City ordinances, subject to the provisions of Section Twelve.F.
9. The first letters of terms may be capitalized for convenience, but failure to capitalize a letter shall not affect the meaning.

SECTION THREE. Franchise required.

A. It shall be unlawful to commence or engage in the construction, operation or maintenance of a Cable System within the territorial boundaries of the City without first obtaining a Franchise issued under the provisions of this Ordinance and entering into a Franchise Agreement with the City. The City may, by ordinance, award a Franchise to construct, operate, and maintain a Cable System within all or any portion of the City to any Person, whether operating under an existing Franchise or not, who makes application for authority to furnish a Cable System which complies with the terms and conditions of this Ordinance. Provided, that

this section shall not be deemed to require the grant of a Franchise to any particular Person or to prohibit the City from restricting the number of Grantees (for example, due to limited capacity in the Public Rights-of-Way) should it determine such a restriction would be lawful and in the public interest.

B. Any Person that provides Cable Service within the City via Facilities or equipment in the Public Rights-of-Way, but is not required under applicable law to obtain a cable Franchise from the City, must obtain a separate authorization from the City granting such Person the right to do so, pursuant to all applicable City law. This includes, but is not limited to, a Person that provides Cable Service via Facilities or equipment in the Public Rights-of-Way that are not owned by such Person, whether or not the owner is an Affiliate.

SECTION FOUR. Application procedures.

A. Any Person interested in obtaining an initial franchise to operate a Cable System in the City of St. Louis shall submit an original and nine copies of a written Application to the Franchise Agency together with a nonrefundable application fee of twenty-five thousand dollars. The Application shall contain the following information:

1. The name, address and business structure of the applicant. If the applicant is a corporation, it shall also state the names, addresses and occupations of its officers, directors and major stockholders, and the names and addresses of any parent or subsidiary companies. If the applicant is a corporation controlled by another corporation, the names, addresses and occupations of the officers, directors and major stockholders of the controlling corporation shall also be stated. If the applicant is a partnership or other incorporated association, the name and address of each member, whether active or inactive shall be set forth, and if one or more partners are corporations, the names, addresses and occupations of such corporation's officers, directors and major stockholders shall also be stated;
2. A list of all other Cable Systems, if any, in which the applicant (or any partner or major stockholder of applicant) has a direct or indirect interest, stating the location, approximate number of homes served, and the name and address of the local franchising body;
3. A list of all other Cable Systems, if any, for which the applicant or its corporate parents have obtained franchises but have not yet completed construction. If such other systems exist, the applicant should explain any implications of its financial commitments elsewhere for the financing of its prospective Franchise in the City.
4. A thorough description of the proposed Cable System to be installed and operated; a construction time-table covering start through completion of all Facilities of the system; a time-table for capability to deliver Subscriber service to each portion of the Franchise Area and for the entire City; and a description of the extent and manner in which existing or future poles or other facilities of public utility companies will be used in the proposed system.
5. A copy of any contract which may exist between the applicant and any public utility providing for the use of such utility's property, such as poles, lines or conduits, in the City;
6. A statement setting forth all agreements and understandings whether written, oral, or implied, between the applicant and any other Person with respect to the proposed Franchise or proposed Cable System operation. If a Franchise should be granted to a Person posing as a straw party for or representative of another undisclosed Person, such Franchise shall be deemed void *ab initio* and of no force and effect whatsoever;
7. An estimate of the cost of constructing the applicant's proposed Cable System and a financial statement prepared in form satisfactory to the City showing applicant's financial status and its financial ability to meet these proposed costs. If construction will take more than one year the estimate shall be broken down to costs for each year;
8. A schedule of proposed rates and charges to all classes of Subscribers for both installation and monthly Cable Service, consistent with the financial statement required in Section Four.A.7;
9. A sworn statement acknowledging the applicant's familiarity with and eligibility under the provisions of this Ordinance, the City's customer service ordinance and the rules of the FCC, and its intention to abide by the same;
10. An applicant shall provide any such supplementary information as the City shall at any time demand in order to reasonably determine whether the requested Franchise should be granted. The acceptance or use by the City of any of the written information submitted by the applicant pursuant to this Ordinance shall not constitute any waiver or abrogation of the standards or requirements of this Ordinance with regard to any breach of or non-compliance with this Ordinance which may be reflected in the applicant's written submissions.

B. The Franchise Agency may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by Section Four.A.

C. For the purposes of determining whether it shall grant an initial Franchise, the City or its agents may inquire into all qualifications of the prospective Grantee and such other matters as the City may deem necessary to determine whether and under what

conditions an initial Franchise should be granted. An applicant shall assist the City in any such inquiry, and if it fails to do so, the application may be denied.

D. After receiving an initial Franchise application, the Franchise Agency shall specify a public place where interested parties may inspect all such bona fide applications and schedule a public hearing before the Franchise Agency.

SECTION FIVE. Renewal procedure.

A. The renewal of any Franchise shall be conducted in a manner consistent with applicable federal law.

B. Any ordinance renewing a Franchise shall be adopted in accordance with any applicable requirements of the City Charter.

SECTION SIX. Procedures for ordinances granting or renewing franchises.

A. The provisions of Section 1 of Article XIX of the Charter of the City apply to all granting or renewal of Franchises as contemplated in this Ordinance.

B. Upon introduction into the Board of Aldermen of any board bill the effect of which is to grant or renew any Franchise, the clerk shall immediately notify the Secretary of the Board of Public Service of said fact and transmit to the Board of Public Service a copy of the proposed Board bill that would authorize the granting or renewal of said franchise.

C. Subject to applicable law, the City reserves any rights it may have to impose application fees for franchise transfer or renewal.

SECTION SEVEN. Transfer

A. A Franchise shall be a privilege which is personal to the original Grantee. It shall not be sold, Transferred, leased, assigned, or disposed of, directly or indirectly, in whole or in part, either by forced or voluntary sale, merger, consolidation, receivership, appointment of a trustee or foreclosure, or otherwise, without prior consent of the City expressed by ordinance, and then only under such lawful terms and conditions as may therein be prescribed by the City. Upon such approval a Grantee may proceed to make the Transfer under such terms and conditions. Any such Transfer or assignment shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the Franchise by transferee, a duly executed copy of which shall be filed with the Agency within thirty days after any such Transfer or assignment is complete.

B. Application.

1. A Grantee shall promptly notify the Franchise Agency of any proposed Transfer. If any Transfer should take place without prior notice to the Franchise Agency (contrary to the requirements of this Section), the Grantee will promptly notify the Franchise Agency that such a Transfer has occurred.
2. At least one hundred twenty (120) calendar days prior to the contemplated effective date of a Transfer, a Grantee shall submit to the Franchise Agency an original and nine copies of a written Application for approval of the Transfer ("Transfer Application"). Such a Transfer Application shall provide complete information as described in this Section Seven.B on the proposed transaction. At a minimum, the Transfer Application must include (subject to the provisions of Section Seven.B.3 regarding confidential, trade secret, or proprietary information):
 - a. all information and forms required under federal law;
 - b. a complete and unredacted copy of the agreement(s) to carry out the proposed transaction(s) and of all schedules, exhibits, and other documents attached thereto, together with any documents referred to therein that were prepared for purposes of the proposed transaction, and any other documents necessary to understand the proposed transaction or its effect on the City; provided, however, that the Grantee may, subject to the provisions of Section Seven.B.3, redact (i) confidential, trade secret, or proprietary information, and (ii) documents relating only to other communities and having no material effect on the proposed transaction as applied to the City;
 - c. a diagram or description of the ownership and control of the proposed transferee, showing the relationship of the proposed transferee to its immediate, intermediate, and ultimate owners;
 - d. to the extent already prepared, audited or, if audited statements are not available, otherwise publicly available financial statements for the transferee or, if such statements for the transferee are not available, such statements for the closest corporate parent in the line of control of the transferee, for the last three years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;
 - e. a description of the sources and amounts of the funds or other consideration to be used in the proposed transaction, and, if the proposed transaction requires that the Cable System be used as collateral for debt, the anticipated debt/equity ratio applicable to the Cable System;

- f. other information necessary to provide a complete and accurate understanding of the financial a statement certifying that the Transfer will not adversely affect Subscriber rates (which may reserve the proposed transferee's right generally to make any lawful changes in rates after the Transfer), or, in the alternative, explaining any such adverse impact that the proposed transferee reasonably foresees; a statement certifying that the Transfer will not adversely affect the quality of service, or, in the alternative, explaining any such adverse impact that the proposed transferee reasonably foresees;
 - h. a description of the transferee's prior experience in cable system ownership, construction, and operation;
 - i. a brief summary of any plans the proposed transferee may have at the time of the Transfer Application regarding line extension, plant and equipment upgrades, channel capacity, expansion or elimination of services, and any other changes affecting or enhancing the performance of the Cable System;
 - j. a complete list of any final actions taken in the past five years by a franchising authority with respect to the proposed transferee (or any corporate parent) denying transfer or renewal;
 - k. a complete list of any legal actions known to the transferee (or any corporate parent) relating to cable franchises (other than tax and condemnation actions) filed in any federal or state court or at the Federal Communications Commission in the past three years by a franchising authority against the transferee (or any corporate parent), or by the transferee (or any corporate parent) against a franchising authority, listing for each such action the information normally shown in the case caption and the current status of the case (for example, "settled" or "pending");
3. Confidential, Trade Secret, or Proprietary Information
- a. If a Grantee claims that any specific documents or portions thereof required by Section Seven.B.2 of this Ordinance are confidential, trade secret, or proprietary, then rather than submitting such documents or portions thereof with the Transfer Application, the Grantee may redact such specific documents or portions thereof and include with the Transfer Application a schedule of all such documents or portions thereof identifying any redacted materials and the basis on which the Grantee believes them to be confidential, trade secret, or proprietary.
 - b. If the City wishes to inspect the confidential, trade secret, or proprietary materials referred to in Section Seven.B.3.a in unredacted form, then, pursuant to a lawful and reasonable confidentiality agreement as appropriate, the Grantee shall make such materials available for inspection within ten days after the City's written request at a location within the City or as otherwise agreed to by the City and the Grantee, using its best efforts to accommodate the City's reasonable preferences as to the time and place of inspection.
 - c. If the City considers the Transfer Application incomplete without the redacted information, it shall so notify the Grantee within the first thirty days after submission of the Transfer Application. If the City does not so notify the Grantee, the City shall be deemed to have accepted the redactions as not rendering the Transfer Application incomplete for purposes of any applicable federal time period for review; provided, however, that this provision shall not be construed to limit any right of the City to request or require such information after the initial thirty-day period (without affecting any review period specified by federal law). If Grantee makes such information available for inspection as provided in Section Seven.B.3.b within ten days after written request by the City, such redactions shall not be a basis for a determination that the Transfer Application is not complete.
4. Documents Relating to Other Communities
- If a Grantee redacts documents relating only to other communities and having no material effect on the proposed transaction as applied to the City pursuant to Section Seven.B.2.b, the Grantee may redact such documents, and the City may inspect such documents to determine whether they have been properly redacted pursuant to Section Seven.B.2.b, in the same way as for confidential, trade secret, or proprietary information pursuant to Section Seven.B.3.
5. To the extent consistent with applicable law, the Franchise Agency may waive in writing any requirement that information specified in Section Seven.B.2 be submitted as part of the initial application, without thereby waiving any rights the Franchise Agency may have to request such information after the initial application is filed.
- C. A Grantee shall have a continuing obligation to update the information specified in Section Seven.B.2 to reflect any material changes after the submission of such information. Such updates shall not alter any deadlines specified by federal law for the City's review of the Transfer.
- D. Consent of the City shall not be granted until it has complied with all City Charter requirements applicable to a Transfer.

E. Determination by City.

1. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer, the City may consider, without limitation and including any matter not prohibited by applicable law, the legal, financial, and technical qualifications of the transferee to operate the system; any potential impact of the Transfer on subscriber rates or services; whether the proposed transferee will meet all Franchise obligations (including without limitation any outstanding obligation to remedy any past noncompliance); and whether the transferee owns or controls any other Cable System in the City.
2. Any Transfer without the City's prior written approval shall be ineffective, and shall make the Franchise voidable by ordinance, and subject to any other remedies available under this Agreement or other applicable law.
3. A Grantee shall be fully liable under its Franchise for any Transfer that is in violation of the terms of that Franchise and caused in whole or in part by any other Person or Persons, including but not limited to any Affiliates, as if such Transfer had been caused by the Grantee itself.
4. Transferee's Agreement. No application for a Transfer in which a different entity holds the Franchise after the Transfer than beforehand shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of the previous Grantee's Franchise Agreement, this Ordinance, other applicable law, and any other agreements between the City and the previous Grantee, and provides all additional items required thereby (for example, insurance certificates and bonds).

SECTION EIGHT. Payments to the City.

A. A Grantee shall pay the City as compensation for the rights and privileges enjoyed under the Grantee's Franchise a sum equal to five percent of the gross revenues derived from operation of the Grantee's Cable System within the City to provide Cable Services.

B. A Grantee shall file with the Comptroller and the Franchise Agency a quarterly statement showing the gross revenues derived from the operation of its Cable System within the City during the three month periods ending respectively on the last day of March, June, September and December of each calendar year. Said statements shall be filed not later than forty-five days after the close of the quarterly period to which they apply. Statements shall include a detailed fee calculation report delineating categories of revenues, calculation methodology, and other pertinent documentation with form and content acceptable to the Agency and the City Comptroller and subject to revision to reflect new services or business conditions.

C. A quarterly installment of the payment required in Section Eight.A shall be paid at the time of filing each statement required by Section Eight.B and shall be submitted with said statements. Each such quarterly payment shall be in an amount equal to the portion of the annual payment which accrued during the quarter which is recorded in the statement.

D. The City shall have the right to inspect a Grantee's records showing the gross revenues from which its Franchise payments are computed, and shall also have the right of audit and recomputation of any and all amounts paid under this Ordinance.

E. In the event that any payment required from a Grantee under this section is not paid when due, there shall accrue to such debt, from and after the due date and running until such payment is received by the City (either from the Grantee directly or by recovery from a bond, letter of credit, escrow amount, or similar instrument), interest at ten percent per annum.

F. For purposes of calculating franchise fee payments under applicable Franchise provisions, in any aggregated bill which includes cable services and non-cable services or other products, any charges and discounts shall be allocated in a reasonable manner and in accordance with generally accepted accounting principles (GAAP). Franchise fee payments covering periods in which any such aggregated bill is used shall be accompanied by a full explanation of such allocation and the amounts so allocated. Any such allocation may be addressed in any audit conducted pursuant to this Ordinance or any Franchise Agreement.

G. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this Ordinance or for the performance of any other obligation hereunder; however, an accounting rendered to the City and to which no exception is made within five years after receipt by the City shall be deemed to be accurate and shall not thereafter be subject to question or made the basis of any claim by City against a Grantee.

H. Payment of the Franchise fee shall not be considered in the nature of a tax or in lieu of other taxes or fees imposed by the City. The Franchise fee is in addition to all other taxes, fees, assessments, and payments that a Grantee may be required to pay under its Franchise Agreement or any federal, state, or local law or ordinance, and to any other tax, fee, assessment or payment imposed on utilities and Cable Operators or their subscribers for use of their services, facilities, or equipment, including any applicable amusement taxes, except to the extent that such fees, taxes, or assessments are a Franchise fee under Section 622 of the Cable Act, 47 U.S.C. § 542.

I. A franchise ordinance may require a Grantee to contract, for all or part of a franchise term, for lock box service with a bank with an office in the City. Such a contract shall be subject to approval by the Franchise Agency and shall provide that a lock box address shall be the Grantee's designated address for mailed payments by Subscribers, and may provide for periodic disbursements of lock box receipts to the City for application to the Grantee's Franchise fee obligations to the City.

SECTION NINE. Acceptance and term of franchise.

A. Any cable Franchise granted by the City shall be for a term of no more than fifteen years; which time shall commence to run upon the Effective Date of the Franchise. This Section shall not preclude the extension or renewal of a Franchise pursuant to applicable law, but any renewal period shall also be limited to fifteen years.

B. A Grantee shall accept its Franchise by executing its Franchise Agreement and filing it with the City Register within thirty City business days after the effective date of the ordinance awarding that Franchise. An acceptance is not valid unless and until the Agency and the City Counselor certify in writing to the City Register that the acceptance is complete and consistent in all respects with the requirements of this Ordinance and the Grantee's Franchise Agreement. An acceptance shall consist of a written and unconditional acceptance of and agreement to all the provisions of a Grantee's Franchise Agreement and this Ordinance, and shall also consist of all of the following:

- a. Any certificates of insurance required by its Franchise Agreement or this Ordinance;
- b. Any bond, letter of credit, escrow amount, or similar instrument required by its Franchise Agreement or this Ordinance.
- c. Proof of establishment of any construction escrow account required by its Franchise Agreement or this Ordinance;
- d. Any other executed contracts or other documents as required by its Franchise Agreement or this Ordinance.

C. A Grantee's Franchise Agreement shall constitute a contract between the City and the Grantee upon the Grantee's acceptance of its Franchise pursuant to this Section Nine.

D. Unless and until a Grantee completes an acceptance pursuant to this Section Nine, the Franchise awarded subject to the completion of such acceptance shall have no effect, and the Grantee shall obtain no new right therefrom, and any right of Grantee to construct, operate or maintain a Cable System in the City shall be subject to the City's permitting, in its sole discretion, where applicable, such construction, operation, or maintenance under such terms and conditions as may then be in effect for a period of time sufficient, in the City's judgment, to ensure continuity of Cable Service to Subscribers, to allow further negotiations, renewal, or application processes, or to terminate a Franchise pursuant to applicable law and allow a Grantee to dispose of its System in a manner approved by the City, all subject to applicable law.

SECTION TEN. Termination of franchise.

A. In addition to all other rights and powers reserved by the City in granting any Franchise, the City reserves the right to terminate and cancel any Franchise and all rights and privileges of the Grantee thereunder pursuant to the terms of its Franchise Agreement and this Ordinance, or as such termination or cancellation may be expressly provided for in a related agreement with the City, in the event that the Grantee:

1. Materially violates any provision of the Grantee's Franchise, or any rule, regulation, order or determination of the City made pursuant to the Franchise, except where such violation is without fault or through excusable neglect, provided that a Grantee is not without fault if a violation is caused or committed by an Affiliate or a corporation or business entity in which such Grantee holds a controlling interest directly or indirectly;
2. Attempts to dispose of any of the Facilities or property of its cable business to the detriment of its Franchise;
3. Attempts a material evasion of any of the provisions of its Franchise;
4. Practices any fraud or deceit upon the City;
5. Violates the material construction requirements of Section Nineteen of this Ordinance.
6. Violates any related agreement with the City which expressly provides for Franchise termination in the event of such violation.

B. The procedure for termination of a Franchise under Section Ten.A shall be as follows:

1. If the Franchise Agency determines that a Grantee is not, in its opinion, in material compliance with this Ordinance or the terms or conditions of any Franchise issued thereunder, or any rule, regulation, order or determination of the City made pursuant to the Franchise, it may initiate such termination proceedings by notifying the Grantee with a copy to the Board of Aldermen, and the Grantee shall within thirty days bring the franchised system into compliance with the terms of the notice issued by the City, reporting the corrective action taken by the Grantee to the Franchise Agency.
2. If a majority of the members of the Board of Aldermen state by Resolution that they are not satisfied that compliance has been achieved, or that good faith progress is being made toward compliance, a public hearing

before the Public Utilities Committee or its successor shall be scheduled to determine whether the Franchise should be revoked. The Grantee and the public shall be given at least fifteen days notice of such hearing. All interested parties shall be heard in an open and public hearing. Subsequent to the public hearing, the Board of Aldermen shall determine whether the Franchise shall be terminated and shall set forth, in writing, the facts and reasons upon which its decision is based.

C. Termination on account of certain assignments or appointments

1. To the extent not prohibited by the United States Bankruptcy Code, a Franchise shall terminate automatically by force of law one hundred eighty (180) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee (including a debtor-in-possession in a reorganization) to take over the business of a Grantee, whether in bankruptcy or under a state law proceeding; provided, however, that such Franchise shall not so terminate if, within that one-hundred-eighty-day period:
 - a. Such assignment, receivership or trusteeship has been vacated; or
 - b. Such assignee, receiver, or trustee has cured or agreed to cure any defaults under the Franchise and has executed an agreement, duly approved and executed on behalf of the City, submitted to any court whose approval is required within one hundred twenty (120) days after such assignment or appointment, and approved by any such court within an additional sixty (60) days thereafter, under which it assumes and agrees to be bound by the terms and conditions of the Franchise.
2. To the extent not prohibited by the United States Bankruptcy Code, in the event of foreclosure or judicial sale of substantially all of the Facilities, equipment, or property of a Grantee, the Franchise and Franchise Agreement shall automatically terminate one hundred eighty (180) calendar days after such foreclosure or sale, unless:
 - a. The City has approved a Transfer of the Franchise to the successful bidder in accordance with the provisions of this Ordinance; and
 - b. The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise.

SECTION ELEVEN. Amendment of franchises.

Any amendment of a Franchise Agreement shall be subject to acceptance by the Grantee, except that nothing herein or in any Franchise Agreement shall be construed to limit the lawful exercise of the City's police power, authority lawfully to levy any nondiscriminatory taxes on any activity conducted by a Grantee, or other lawful authority, whether exercised by ordinance or otherwise. Nothing herein, however, shall affect the City's or a Grantee's rights with respect to renewal of the Grantee's Franchise.

SECTION TWELVE. Conditions and limitations of Franchise.

A. This Ordinance itself grants no authority to operate a Cable System. Such grants shall be made by the adoption of a separate ordinance pursuant to the provisions of the City Charter and this Ordinance concerning approval of ordinances granting or renewing a specific Franchise to an applicant who has complied with the provisions of this Ordinance.

B. No ordinance granting a Franchise shall be adopted until all requirements of the Charter relating to such an ordinance have been complied with.

C. A Franchise authorizes use of Public Rights-of-Way for installing, operating and maintaining, as herein and in the Franchise Agreement provided, cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a Cable System to provide Cable Service within a Franchise Area, but does not authorize a Grantee to place facilities on private property without owner consent, provided, however, that other applicable law may operate to authorize such placement.

D. A Franchise shall constitute both a right and an obligation to use a Cable System to provide Cable Service in the City pursuant to the requirements of the Grantee's Franchise Agreement and this Ordinance.

E. Any Franchise granted under this Ordinance shall be non-exclusive and revocable pursuant to its terms, and nothing herein shall be construed to prevent the City from granting cable Franchises or other Public Right-of-Way authorizations to more than one Person, within all or any portion of the City. The City shall not grant a Franchise or similar authorization for Cable Services that would impose an unfair competitive disadvantage on a Grantee by granting terms or conditions under another Person's franchise agreement or similar authorizing document that are materially more favorable or less burdensome than those of such Grantee under its Franchise Agreement or similar authorizing document.

F. A Grantee, shall at all times during the life of its Franchise, be subject to the lawful exercise of the City's police power, authority lawfully to levy any nondiscriminatory taxes on any activity conducted by Grantee, or other lawful authority, whether exercised by ordinance or otherwise. Nothing contained in this Ordinance shall be deemed to prohibit in any way the right of the City lawfully to levy any nondiscriminatory taxes on any activity conducted by Grantee.

G. All privileges prescribed by a Franchise shall be subordinate to any prior lawful occupancy of the Public Rights-of-Way,

and the City reserves the right to reasonably designate by permit or otherwise where a Grantee's facilities are to be placed within the Public Rights-of-Way.

H. Nothing in this Ordinance in any way impairs or waives any right or power of the City to acquire the property of a Grantee by purchase at a price reflective of its fair market value as an ongoing concern (provided that in no event is the franchise itself to enter as an element into such compensation) or such other price as may be required pursuant to applicable law, or through the exercise of the power of eminent domain pursuant to Missouri law.

I. This Ordinance, and Franchises granted under this Ordinance, shall be subject to the applicable provisions of the U.S. Constitution and the Constitution of the State of Missouri.

SECTION THIRTEEN. Channel capacity and system requirements.

A. Channel Capacity. A Grantee shall construct a Cable System that shall have a minimum capacity of 750 MHz.

B. Emergency Alert System. A Grantee shall design and construct the system to provide for an emergency alert system as specified in its Franchise Agreement.

SECTION FOURTEEN. Two-way capacity and addressability.

Any system shall be, at the time of its installation and at all times thereafter maintained as, a two-way interactive addressable system.

SECTION FIFTEEN. PEG Access requirements.

A. A Grantee's Franchise Agreement shall require the Grantee to provide and maintain:

1. **Municipal and School Services.** At least one service outlet to each municipal facility and public or private School within its Franchise Area at no cost to the City or School systems involved, and charging only its time and material costs for any additional service outlet installations to such facilities;
2. **A Public Access Channel.** At least one specially designated, non-commercial Public Access Channel available on a first-come, nondiscriminatory basis and managed by a nonprofit organization acceptable to the City;
3. **A Community Access Channel.** At least one specially designated, non-commercial Community Access Channel available on a first-come, nondiscriminatory basis and managed by a nonprofit organization acceptable to the City;
4. **A Local Government Access Channel.** At least one specially designated channel available for City use;
5. **An Elementary and Secondary Educational Access Channel.** At least one specifically designated channel for use by local educational authorities at the elementary and secondary levels;
6. **A University and College Educational Access Channel.** At least one specially designated channel for use by the local (St. Louis or St. Louis County) universities and colleges, whether public or private institutions;

B. Access Channel assignments shall be the same throughout the Cable System in the City.

1. Access Channel assignments shall not be changed unless there is good cause.
2. If a Grantee seeks to change the channel assignment of an Access Channel more than twice during a Franchise term, the Grantee must obtain the consent of the Access Channel User to the additional change, which consent shall not be unreasonably withheld.
3. Any reassignment of an Access Channel must be to a channel of technical quality at least equivalent to that of other channels on the system.
4. In the event of such a reassignment, the Grantee shall pay the costs of all equipment, advertising, and promotional materials required due to the reassignment.

C. A Grantee by accepting a Franchise agrees that the City may, from time to time, by ordinance regulate use of Public Access Channels; and that it will permit the public to use the Public Access Channel or Channels at minimal or no cost.

D. A Grantee will provide any Access Channels on the basic tier throughout the life of the Franchise, or if there is no basic tier, shall provide the Access Channels at no charge to Subscribers, and otherwise in accordance with federal and state law. If channels are selected through a menu system, the Access Channels shall be displayed; provided, however, that the City or its designee shall be responsible for providing any necessary information for the Access Channels for the menu system as reasonably required by the Grantee or the entity providing Grantee's menu system.

SECTION SIXTEEN. Technical requirements and channel capacity.

- A. The Cable System to be constructed by Grantee shall be installed, maintained, and operated at all times in full compliance with all applicable technical and channel capacity standards of the Federal Communications Commission.
- B. The results of annual performance tests in accordance with FCC rules and regulations shall be retained by a Grantee for at least five (5) years and shall be available for inspection by the Franchise Agency during business hours at Grantee offices in the City upon twenty-four hours' notice. Copies of such test results shall be promptly provided upon the Agency's request.
- C. A Franchise Agreement shall address technical performance and testing procedures.
- D. A Grantee shall conduct monthly tests of the emergency alert system, in conjunction with the City department designated for such testing.
- E. The City shall have the authority to inspect any portion or component of the Cable System, including but not limited to subscriber connections, in order to enforce compliance with the provisions, standards, and requirements of FCC regulations.

SECTION SEVENTEEN. Safety requirements.

- A. A Grantee shall at all times:
1. Install and maintain its wires, cables, fixtures, and other equipment in accordance with good engineering practices and the requirements of the National Electrical Safety Code promulgated by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and any other applicable codes and standards;
 2. Install and maintain all structures, lines, equipment, and connections in, over, under and upon the Public Rights-of-Way of the City and other public or private property in such safe condition so as not to endanger human life or health or property;
 3. Maintain and implement procedures for responding to reports of dangerous situations and correcting any dangerous situations in a timely manner twenty-four hours a day, seven days a week.
- B. The authorized inspection officials of the City shall have the authority to inspect and enforce compliance with the provisions of this section, including inspection of the system's technical equipment and facilities.

SECTION EIGHTEEN. Conditions on street occupancy.

- A. Work on a Grantee's aerial or underground plant, including but not limited to any pavements, sidewalks, curbing or other area uprooted or any excavations made by a Grantee, shall be done under the supervision and direction of the Franchise Agency or its designee under Permits issued for work by the proper officials of the City, and in accordance with the conditions listed in such Permits. A Grantee must obtain such Permits, without limitation, when relocating plant from aerial to underground, installing new or additional aerial strand or underground conduits, manholes, handholes or vaults.
1. Such work shall be done in such manner as to protect all existing property belonging to the City and so as to cause the least inconvenience to the inhabitants of the City.
 2. A Grantee shall comply with City Street Department regulations regarding resurfacing or restoration of pavements, sidewalks, curbing or other areas, or payment for such resurfacing or restoration.
- B. A Grantee shall make and keep full and complete plats, maps and records showing the actual locations of its facilities located within the Public Rights-of-Way of the City. These maps shall be provided to the Franchise Agency in both hardcopy and compatible electronic formats, updated at least annually and at such other times as may be specified by the Franchise Agency. In addition, the Grantee shall make "as-built" maps (as that term is used in the cable industry) available to the City for inspection.
- C. A Grantee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property in the Public Rights-of-Way when required by the City by reason of traffic conditions, public safety, street construction, change of street grade, installation of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal improvements. The City shall give reasonable notice under the circumstances.
- D. A 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. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.
- E. All cable, wires, or other similar facilities, shall be underground in those areas of the City where similar facilities of all telephone and electric utilities are underground at the time of installation of the Grantee's Cable System. In areas where both telephone and electric utilities' facilities are aboveground at the time of installation of the Grantee's Cable System, the Grantee may install its Cable System aboveground, upon the condition that at such time as such facilities are placed underground by all telephone and electric utility companies, the Grantee shall likewise place such facilities underground at its sole cost and expense.

F. Each Grantee's Facilities are subject to the City's vacation authority. In the event that Public Rights-of-Way are vacated by the City and deeded to a private entity, the receiving entity shall be responsible for any costs associated with removal of a Grantee's Facilities. If agreement cannot be reached between the receiving entity and the Grantee as to such costs, the City may require the Grantee to remove its Facilities for such consideration and upon such terms as the City shall determine to be just and reasonable.

G. No poles or other wire-holding structures shall be erected by a Grantee without prior approval of the Franchise Agency, with regard to location, height, type and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby and provides the Grantee reasonable notice under the circumstances.

H. Where poles or other wire-holding structures already existing for use in serving the City are available for use by a Grantee, but it does not make arrangements for such use, the City may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

I. Where the City or a public utility serving the City desires to make use of the poles or other wire-holding structures of a Grantee but agreement therefor with the Grantee cannot be reached, the City may require the Grantee to permit such use for such consideration and upon such terms as the City shall determine to be just and reasonable, if the City determines that the use by the City in its governmental capacity for noncommercial purposes would enhance the public convenience and would not unduly interfere with the Grantee's operations.

SECTION NINETEEN. Construction.

A. Each Franchise Agreement shall specify the time by which initial or required upgrade construction thereunder, if any, must begin, and shall specify that construction will be completed with reasonable speed, pursuant to Article XIX of the Charter.

B. A Grantee shall file a map and progress report with the Franchise Agency at the close of each calendar year, showing the exact areas of the City being served by the Cable System and the location and identification of major component parts of the Cable System.

C. A Grantee that is constructing its Cable System for the first time shall submit monthly construction reports to the Franchise Agency, beginning the month after the Franchise is awarded and continuing until the initial construction required in its franchise agreement is complete. Such Grantee must submit updated as-built system design maps to the Franchise Agency, or make them available for inspection with notice of their availability, within 30 days of the completion of system construction in any geographic area. These maps shall be developed on the basis of post-construction inspection by the Grantee and construction personnel to assess compliance with system design. Any departures from design must be indicated on the as-built maps, to assist the Franchise Agency in assessing operator compliance with its obligations.

D. A Grantee shall promptly notify the Franchise Agency of any delays known or anticipated in the construction of its system or in providing access to said system.

E. Failure on the part of a Grantee to commence and diligently pursue each of the material requirements in its Franchise Agreement to complete construction pursuant to this Section Nineteen shall be grounds for termination of its Franchise pursuant to Section Ten; provided, however, that the City may in its discretion extend the time for the commencement and completion of construction and installation and service to Subscribers for additional periods in the event a Grantee, acting in good faith, experiences delays by reasons of circumstances beyond its control.

F. At such time as a Grantee shall become aware that circumstances beyond its control may prevent its compliance with the provisions of this Section Nineteen, said Grantee shall immediately notify the Franchise Agency, in writing, as to the exact conditions responsible for such delay, and shall show the specific remedy and methods it has undertaken to correct said condition causing the unanticipated delay. Failure to file said written notification by the Grantee shall constitute an act of bad faith.

G. In the event the operation of any part of a franchised Cable System is discontinued for a continuous period of four months, or in the event such system has been installed in any Public Rights-of-Way without complying with the requirements of the Grantee's Franchise, or in the event of expiration, termination or revocation of the Franchise and, where applicable, an affirmative determination by the City not to renew such Franchise, the City may direct a Grantee promptly to remove at Grantee's cost from the Public Rights-of-Way all such property and poles of such system or part of a system. Any property which the Grantee allows to remain in place twelve months after having been notified by the City that it must be removed (or, if specific right-of-way space occupied by Grantee's plant is immediately needed for purposes of providing Cable Service, sixty days after such notice) shall be considered permanently abandoned and shall become the property of the City subject to the provisions of any utility joint use attachment agreement.

SECTION TWENTY. Rates charged to Subscribers.

A. The City reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.

B. A Grantee shall comply with all applicable law and regulations regarding rates and charges. In particular, and without limitation, a Grantee shall comply with all rate orders issued by the City unless such orders are stayed by a court or agency of competent jurisdiction.

C. Procedures and local rules for rate regulation shall be established by the Franchise Agency and confirmed by resolution of the Board of Aldermen in accordance with applicable law.

SECTION TWENTY-ONE. Minority and women participation, training.

In light of the economic benefits a Grantee derives from its use of the Public Rights-of-Way and the racial, ethnic and socio-economic diversity of the population of the City:

A. Any Franchise Agreement shall address minority and women's business participation through contracts for professional and technical services, construction contracts or subcontracts, and supply contracts; and the hiring of members of minority groups and women by the Grantee. Franchise Agreements shall also address monitoring, verification, reporting and enforcement methodologies relating to such provisions.

B. Any Franchise Agreement shall address training of potential employees by Grantees in a manner beneficial to residents of the City, and/or funding or other support of programs for such training. Franchise Agreements shall also address monitoring, verification, reporting and enforcement methodologies relating to such provisions.

SECTION TWENTY-TWO. Job skills and training.

A Franchise Agreement shall address provision by a Grantee of non-employee training opportunities and internships.

SECTION TWENTY-THREE. Other business activities.

A Franchise hereunder authorizes only the operation of a Cable System as provided for herein, and does not take the place of any other franchise, license, or permit which might be required by law of a Grantee.

SECTION TWENTY-FOUR. Continued use of individual antennas protected.

It is not the City's intention to prohibit the erection or continued use of individual television antennas, and no one is or will be required to receive Cable Service or connect with a Cable System.

SECTION TWENTY-FIVE. Grantee may promulgate rules.

A Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business, consistent with its Franchise Agreement and applicable law, as shall be reasonably necessary to enable it to exercise its rights and perform its services under this Ordinance and the rules of the FCC, and to assure uninterrupted service to each and all of its Subscribers. Such rules and regulations shall not be deemed to have the force of law, and the Grantee shall not, as to rates, charges, service, services, facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any Person, nor subject any Person to any prejudice or disadvantage.

SECTION TWENTY-SIX. Discriminatory practices prohibited

A. A Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, programmers, or residents of the City on the basis of race, color, religion, national origin, sex, or age. A Grantee shall comply at all times with all applicable federal, state, and City laws, and all executive and administrative orders relating to non-discrimination.

B. A Grantee shall not discriminate among Persons or take any retaliatory action against a Person because of that Person's exercise of any right it may have under federal, state, or local law, nor may the Grantee require a Person to waive such rights as a condition of taking service.

C. A Grantee shall not deny access or levy different rates and charges on any group of potential residential cable subscribers because of the income of the residents of the neighborhood or local area within the City in which such group resides.

D. Subject to applicable law and except to the extent the City may waive such a requirement, a Grantee is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Grantee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the City; and a Grantee may offer discounts for the elderly, the handicapped, non-for-profit persons or organizations, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner.

SECTION TWENTY-SEVEN. Liability and indemnification.

A. A Grantee shall pay, and by its acceptance of a Franchise specifically agrees to pay and indemnify the City for, any and all damages or penalties which the City may sustain or be legally required to pay as a result of Grantee's installation, operation or maintenance of a Cable System under this Ordinance or in any way resulting from acts or omissions of a Grantee hereunder, including its agents, employees and subcontractors, whether or not the acts or omissions complained of are authorized, allowed or prohibited by the City, and whether or not covered by insurance. The obligations under this Section Twenty-Seven shall not limit any right of a Grantee to assert any claim against any third party.

B. A Grantee shall also pay all expenses incurred by the City in defending itself with regard to any and all damages and penalties mentioned in Section Twenty-seven.A, above. These expenses shall include all out of pocket expenses, including reasonable attorneys' fees and the reasonable value of services rendered by any employee of the City, or expert witness or consultants hired by the City in connection with such defense.

C. A Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring the City and the Grantee with regard to all damages mentioned in subsection A, above, caused by Grantee or its agents.

D. Additionally a Grantee shall maintain in full force and effect policies of insurance in forms and minimum amounts hereafter described to-wit:

1. Workmen's Compensation insurance as provided by the laws of the state;
2. \$500,000 for bodily injury or death to any one person; \$1,000,000 for bodily injury or death resulting from any one occurrence;
3. \$1,000,000 for property damage resulting from any one occurrence;
4. \$1,000,000 for all other types of liability;

E. The insurance requirements herein shall not be construed to limit the liability of a Grantee to the City to the amounts of such insurance.

F. The insurance policies obtained by a Grantee in compliance with this section shall be issued by a company with a rating of A+ or better by A.M. Best Company and licensed to do business in the State of Missouri, and a current certificate or certificates of insurance shall be filed and maintained with the Franchise Agency during the term of the Franchise. Said policies shall name the City as an additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City thirty days in advance of the effective date thereof.

G. All subcontractors used by a Grantee in the City shall be licensed to do business in the City pursuant to applicable law.

H. The amounts of any policy required by Section Twenty-seven.D may be increased at the initiative of the City's Comptroller, but not more than twice during the term of a Franchise and not more frequently than every five years, as follows: If the Comptroller believes that the amount of insurance provided by any policy required hereunder has become inadequate, the Comptroller shall notify the Grantee of such fact, and of the higher amount the Comptroller believes necessary. If within thirty days after such notice the Grantee and Comptroller have not agreed on an appropriate amount of insurance, each of them shall within seven days designate a professional insurance broker from the St. Louis metropolitan area, and such designated brokers shall within seven days designate a third such broker. Within thirty days after their designation, the panel of brokers shall notify the Comptroller and the Grantee of the insurance which, in their judgment, is appropriate in the circumstances, and Grantee shall procure any increased coverage required. In no event shall the amounts of insurance required by Section Twenty-seven.D be reduced pursuant to this Section Twenty-seven.H.

SECTION TWENTY-EIGHT. Performance bond.

A. With its acceptance of a Franchise, a Grantee shall file with the City Register an executed bond in a form and with a surety acceptable to the City as specified in its franchise agreement to indemnify the City against any loss or damage it may suffer in the event the Grantee fails to comply with one or more of the provisions of its Franchise. Upon written application by a Grantee, the Franchise Agency may, at its sole option, in writing, permit the amount of the bond to be reduced to reflect the percentage of completion of the Grantee's planned construction. Said bond shall be obtained at the sole expense of the Grantee and remain in effect for the full term of the Franchise or any extension (as distinct from renewal) thereof plus an additional six months thereafter (unless a replacement bond covering that period is agreed to by the City). The Grantee and its surety 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 Grantee's failure to comply with one or more of the provisions of its Franchise, including a reasonable allowance for the City's lawful attorneys' fees and costs, up to the full amount of the bond.

B. Neither the filing of a performance bond with the Agency, nor any insurance coverage, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by a Grantee or limit the liability of a Grantee under the terms of its Franchise for damages, either to the full amount of the bond or otherwise.

C. A Grantee shall with its acceptance of a Franchise tender such other security as may be specified by its Franchise Agreement.

SECTION TWENTY-NINE. Right of City to intervene.

The City or its designee hereby reserves to itself the right to intervene in any suit, action, or proceeding involving any provision of this Ordinance.

SECTION THIRTY. Fines

A. Performance of acts prohibited by, or failure to perform acts required by, Section Three, Section Seven.A, Section Eight, Section Twelve.C, Section Twelve.D, Section Thirteen, Section Fourteen, Section Fifteen, Section Sixteen, Section Seventeen, Section Eighteen, Section Nineteen, Section Twenty, Section Twenty-Three, Section Twenty-Six, Section Twenty-Seven, Section Twenty-Eight, Section Thirty-four, and Section Thirty-Five of this Ordinance constitute violations of this Ordinance. Violations of Section Seven.E.2 and Section Fifteen of this Ordinance shall be punishable by a fine of up to Five Hundred Dollars. Any other violation of this Ordinance shall be punishable by a fine of up to Two Hundred Fifty Dollars. Each day that any violation of this ordinance shall continue is a separate violation punishable by the applicable fine

B. A Franchise Agreement shall provide:

1. contractual remedies for the City in the event of violations of the Franchise Agreement by the Grantee;
2. that a violation of the Franchise Agreement which continues after appropriate notice and opportunity to cure, if any, is a violation of this Ordinance as well as a violation of the Franchise Agreement.

C. Any violation of a Grantee's Franchise Agreement which continues after appropriate notice and opportunity to cure, if any, as provided in such Franchise Agreement, is a violation of this Ordinance and subject to a fine of up to \$500.

D. If a Grantee is fined for a violation of this Ordinance pursuant to this Section Thirty, such Grantee shall not be subject to liquidated damages pursuant to its Franchise Agreement for the same violation. If a Grantee is subject to liquidated damages pursuant to its Franchise Agreement for a violation, it shall not be fined for a violation of this Ordinance pursuant to this Section Thirty for the same violation.

E. To initiate the enforcement process under this Section Thirty, the Franchise Agency shall notify the City Counselor that it believes that a violation of this Ordinance, or of a Grantee's Franchise Agreement, has occurred. In such event, if the City Counselor in his discretion determines that there is a reasonable basis for belief that a violation has occurred, he may prosecute such violation pursuant to Missouri law.

F. In his discretion, the City Counselor may authorize alternative enforcement proceedings by the Agency. Such authorization shall be in writing, with notice to any affected Grantees. The procedure for such alternative enforcement procedures shall be as follows:

1. Hearing procedures.
 - a. The Regulatory Section of the Franchise Agency shall issue a notice of complaint/violation to a Grantee in writing, specifying the nature and time of the violation and proposing a penalty consistent with this Section.
 - b. In response to a notice issued under Section Thirty.F.1.a, a Grantee may agree to pay the proposed penalty, or may contest such notice. A Grantee may contest such notice by notifying the Communications Commissioner in writing within ten (10) business days after the Grantee's receipt of the notice issued by the Regulatory Section. Such a Grantee's Reply shall include the basis for the Grantee's objection and any supporting documents the Grantee wishes to have considered in reviewing the notice of violation.
 - c. Within ten (10) business days after receipt of a Grantee's Reply, the Communications Commissioner shall notify such Grantee and the Regulatory Section of a date, time and place of a hearing on the matter, which date shall be not less than fifteen (15) and not more than forty-five (45) days from the date of such notification by the Communications Commissioner.
 - d. The hearing shall be conducted as required by the Missouri Administrative Procedure Act, Ch. 536 RSMo, as amended (the "APA"), for a contested case.
 - e. Not less than thirty (30) days following the conclusion of the hearing, the Communications Commissioner shall issue a written decision consistent with the APA, finding that the complaint/violation as stated in the notice is proven and imposing an appropriate administrative penalty, or modifying or dismissing the Regulatory Section's notice of violation. If the Communications Commissioner does not issue such a decision within such thirty day period, the Regulatory Section's notice of violation shall be deemed dismissed, provided that the Communications Commissioner may extend such period up to a total of 45 days.
 - f. Decisions of the Communications Commissioner pursuant to Section Thirty.F.1.e are appealable pursuant to the APA.
2. Hearing officers.

In lieu of conducting a hearing himself, the Communications Commissioner may appoint a hearing officer to conduct any hearing pursuant to this Section Thirty and submit recommended findings of fact and conclusions of law to the Communications Commissioner. If so, the Commissioner's notice of hearing shall so advise the

Grantee and the Regulatory Section within ten (10) business days of receipt of Grantee's Reply, and shall advise the parties of the name and address of the hearing officer. Hearing Officers may, but need not, be attorneys, and may be appointed from any list of duly selected hearing officers maintained by any City department or agency.

3. Regulations

The Franchise Agency may issue regulations concerning enforcement procedures which are consistent with this Ordinance and applicable law. All Grantees shall be provided written notice of and opportunity to comment on any such regulations prior to their applicability as to that Grantee.

SECTION THIRTY-ONE. Rights and remedies are cumulative.

The rights and remedies reserved to the parties by this Ordinance are cumulative and shall not add or subtract from any other rights or remedies which they may have with respect to the subject matter of this Ordinance, and a waiver thereof at any time shall not affect any other time.

SECTION THIRTY-TWO. Delegation of powers.

This Ordinance shall be administered on behalf of the City by the Franchise Agency. Any lawfully delegable right, power, or duty of the Board of Aldermen hereunder is delegated to the Franchise Agency. The Franchise Agency shall appear before the Public Utilities Committee of the Board of Aldermen every six months to report on the administration of the cable franchise ordinances and on the grantee's compliance with such ordinances. The Franchise Agency shall appear before the Public Utilities Committee at all other times as determined by a majority of the members of such committee to address the administration of the franchise ordinance and any other matter within the jurisdiction of the Franchise Agency or the Board of Aldermen as related directly or indirectly to cable services in the City of St. Louis.

SECTION THIRTY-THREE. Resolution of complaints.

A. Responsibility for the administration of any franchise granted hereunder and for the resolution of all complaints against a Grantee regarding the quality of service, equipment malfunctions, and similar matters, is hereby delegated to the Franchise Agency, which is empowered, among other things, to adjust, settle, or compromise any controversy arising from operations of the Grantee, either on behalf of the City, the Grantee, or any subscriber, in accordance with the best interest of the public; provided that any person aggrieved by a decision of the Agency may within fifteen days of the decision appeal the matter in writing to the Board of Aldermen for hearing and determination.

B. In the event of such an appeal, the Board of Aldermen shall assign the matter to a committee. Such committee shall hold a hearing on such appeal upon fifteen days written notice to the appellant, shall receive evidence at such hearing and shall recommend a resolution of the matter to the Board of Aldermen. The Board of Aldermen may, by resolution, accept, reject, or modify the decision of the Agency, and may adjust, settle, or compromise any controversy arising from the operations of a Grantee under any franchise granted pursuant to this Ordinance.

C. No adjustment, settlement, or compromise, whether instituted by the Franchise Agency or by the City, shall be contrary to the provisions of this Ordinance or of the Franchise Agreement.

SECTION THIRTY-FOUR. Tampering and theft of service.

A. It shall be a violation of this Ordinance for any Person to knowingly commit any of the following acts:

1. obtain or attempt to obtain services of a Cable Operator, by means of artifice, trick, deception, device or other means, without paying all lawful compensation therefor;
2. assist another Person in obtaining or attempting to obtain services of a Cable Operator without paying all lawful compensation therefor;
3. connect to, tamper with or otherwise interfere with any cables, wires or other devices used for the distribution of services of a Cable Operator if the effect of such action is to obtain services of a Cable Operator without paying all lawful compensation therefor; or
4. sell, use, manufacture, rent or offer for sale, use or rental any device, plan or kit designed and intended to obtain services of a Cable Operator without paying all lawful compensation therefor.

B. The existence on the property of and in the actual possession of any Person of any connection wire, or conductor, which is connected in such a manner as to permit the use of services of a Cable Operator without the same being reported for payment to and specifically authorized by the Cable Operator shall be sufficient to support an inference that the Person intended to deprive such Cable Operator of any and all lawful compensation for rendering each type of service obtained.

C. It shall be a violation of this Ordinance for any Person to knowingly destroy or damage any property of any kind belonging to a Cable Operator.

SECTION THIRTY-FIVE. Open Video Systems**A. Applicability of Ordinance.**

1. This Ordinance shall apply to Open Video Systems to the extent permitted by applicable law, except that Section Thirty-five.B shall apply in place of the following sections: Section Four.A (franchise applications), Section Twenty (rate regulation).
2. In applying this Ordinance to an Open Video System, "Grantee" shall be taken to refer to the open video system operator, "Cable System" to the Open Video System, "Franchise" to any authorization granted by the City to the Open Video System operator, and similar terms shall apply similarly.

B. Application for Open Video System Authorization.

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 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 the Public-Rights-of-Way.
 - c. Any information that may be reasonably necessary to demonstrate compliance with the requirements of federal law and with this Section Thirty-five.
 - 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 may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by Section Thirty-five.B-1.
3. Upon application to the City for Open Video System authorization, the applicant shall pay to the City twenty-five thousand dollars. This payment shall be non-refundable and shall be used to offset in whole or in part any costs incurred by the City in granting the authorization.

C. Fee In Lieu of Franchise Fee.

An Open Video System operator shall pay to the City a fee in lieu of and at the same rate as the Franchise fee required in Section Eight.A of this Ordinance, pursuant to the procedures and conditions specified in Section Eight and generally herein.

D. Public, Educational, and Governmental Access Obligations.

An Open Video System operator shall be subject to obligations pertaining to Public, Educational, and Governmental Access pursuant to applicable law and to the requirements herein.

E. Public Right-of-Way Usage.

An Open Video System operator shall be subject to all requirements of state and local law regarding authorization to use or occupy the Public Rights-of-Way, except to the extent specifically prohibited by federal law. FCC approval of an Open Video System operator's certification pursuant to 47 U.S.C. § 573 shall not be taken to confer upon such operator any authority to use or occupy the Public Rights-of-Way that such operator would not otherwise possess.

SECTION THIRTY-SIX. Severability.

If any provision of this Ordinance, or the particular application thereof, shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining provisions, and their application, shall not be affected thereby.

EXHIBIT 1**SETTLEMENT AGREEMENT**

THIS AGREEMENT (the "Settlement Agreement" is made this ____ day of _____, _____, by and between:

the City of St. Louis, a municipal corporation of the State of Missouri, organized and existing under its Charter and the constitution and laws of the State of Missouri and St. Louis Tele-Communications, Inc., a Missouri corporation (“Grantee”),

WHEREAS, in 1984 pursuant to Ordinance 59197 the City of St. Louis awarded two cable television franchises (the “Prior Franchises”) for separate areas of the City comprising the entire area of the City to STL Cablevision Partners and St. Louis City Communications, Inc.; and

WHEREAS, in 1989 pursuant to Ordinance 61093 the City consented to the transfer of the Prior Franchises from the original grantees to St. Louis Tele-Communications, Inc., a Missouri corporation (the “Grantee”), which was owned by Tele-Communications, Inc. (“TCI”); and

WHEREAS, the parties disagree regarding the Grantee’s compliance with its obligations under the Prior Franchises and its liability for any noncompliance with those obligations; and

WHEREAS, the City and the Grantee have agreed upon the terms of a renewal Franchise, which is being authorized concurrently with this Settlement Agreement; and

WHEREAS, the parties wish to settle their differences in a manner that will avoid litigation;

NOW, THEREFORE, in consideration of the promises and undertakings herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, THE PARTIES DO HEREBY AGREE as follows:

1. **DEFINITIONS**

1.1. *Access Channel Manager*: the organization designated by the City to manage and program Public Access and Community Access Channels in the City pursuant to the Franchise Agreement.

1.2. *Authorized User*: any person that lawfully uses the Institutional Network pursuant to this Settlement Agreement.

1.3. *Cable System*: that term as defined at 47 U.S.C. § 522(7) on the date of this Settlement Agreement.

1.4. *City*: the City of St. Louis, a municipal corporation of the State of Missouri, organized and existing under its Charter and the constitution and laws of the State of Missouri, generally acting by and through its Communications Division for purposes of this agreement.

1.5. *Demarcation Point*: the output or connection point to the interface modules at each City or Authorized User site as required herein.

1.6. *Institutional Network or Network*: a high-capacity network related to and, to the extent deemed feasible by the Grantee, jointly constructed with the System Upgrade of the Grantee’s Cable System, as described in detail in Section 6 herein; such network is to be designed and constructed by Grantee and is not generally available to residential subscribers of the Grantee’s Cable System.

1.7. *PEG*: public, educational, and governmental.

1.8. *Service Outage*: any loss of functionality of the Institutional Network.

1.9. *Subcontractor*: an entity that has a direct contract with the Grantee to perform a portion of the Work.

1.10. *System Upgrade*: the upgrade of the Grantee’s Cable System specified in the Franchise Agreement.

1.11. *Work*: whatever is required of the Grantee to perform and complete its duties under Section 6 of this Settlement Agreement. The term does not refer to activities of the Grantee required to perform and complete its duties under the Franchise Agreement, including but not limited to construction of the System Upgrade.

2. **INTENT AND INTERPRETATION**

2.1. When a word, term or phrase is used in the Settlement Agreement, it shall be interpreted or construed as follows: First, as defined in this Settlement Agreement; second, if not so defined, then according to the definition in the Franchise Agreement authorized by Ordinance ____ (BB __) or the Cable Regulatory Ordinance, Ordinance ____ (BB __); third, if not defined in any of the above documents, then according to definitions in the Cable Act or federal regulations pursuant thereto; fourth, if not defined in any of the above, according to its generally accepted meaning in the cable industry; and finally, if there is no generally accepted meaning in the cable industry, according to its common and customary usage.

2.2. Words or terms used as nouns in the Settlement Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

3. **TERM**

3.1 This Settlement Agreement shall be effective on the date on which the Franchise Agreement becomes effective and shall be for a term ending upon the expiration of the Franchise Agreement, including any extension of the Franchise Agreement (as distinct from any renewal of the Franchise Agreement under 47 U.S.C. § 546 or other applicable law). Notwithstanding the foregoing, provisions of this Settlement Agreement shall continue beyond such date and survive the expiration of the Franchise Agreement or revocation of the Franchise if and to the extent necessary to carry out the obligations set forth in Section 6.5.3 of this Settlement Agreement.

3.2 The City reserves the right to terminate and cancel the Franchise and all rights and privileges of the Grantee thereunder, pursuant to the processes specified under the Franchise, if the Grantee materially violates any provision of this Settlement Agreement.

4. SETTLEMENT AND RELEASE OF CLAIMS

4.1. The recitals of this Settlement Agreement are true and correct and are incorporated herein by reference.

4.2. The parties acknowledge and agree that this Settlement Agreement settles and the parties hereby release all claims and causes of action which were or could have been asserted by either party on its own behalf or on behalf of its parents, subsidiaries, affiliates, successors, assigns, officers, directors, shareholders, agents, officials, and employees against the other party or its past and present parents, subsidiaries, affiliates, successors, assigns, officers, directors, shareholders, agents, officials, and employees with respect to their past compliance with their obligations under the Prior Franchises, as well as any other disputes between the parties with respect to the Cable System or the providing of Cable Services which have been raised prior to the date the ordinance authorizing this Settlement Agreement is adopted by the Board of Aldermen, except to the extent otherwise specifically provided in this Settlement Agreement, and reserve all rights as to all other claims and defenses.

4.3. This Settlement Agreement does not resolve and shall not affect the City's review of Grantee's March 1, 2001, rate filing, and the City reserves any rights it may have to order refunds and rate reductions or pursue other remedies with respect to that filing, to the extent consistent with and FCC regulations and other applicable law.

4.4. The settlement of open claims and disputes pursuant to this Settlement Agreement shall not affect any outstanding obligation of the Grantee with respect to payment of franchise fees in full as required by the Prior Franchises to the extent such obligation is not the subject of a separate settlement between the City and Grantee or expressly settled herein.

5. PAYMENTS BY THE GRANTEE

5.1. The Grantee shall provide a grant totaling \$75,000, to be used by the Access Channel Manager, in its discretion, for public and community access equipment and facilities (including, but not limited to, studio and portable production equipment, training equipment, editing equipment and program playback equipment, and PEG-related facilities construction or renovation). This grant shall be payable in three equal installments of \$25,000 each on March 1 of 2002, 2003, and 2004. The Grantee shall also provide a grant totaling \$325,000, to be used by the City's Communications Division for equipment and facilities (including, but not limited to, studio and portable production equipment, training equipment, editing equipment and program playback equipment, and related facilities construction or renovation). This grant shall be payable to the City in three equal installments of \$108,333 each on March 1 of 2002, 2003, and 2004.

5.2. The Grantee shall provide additional grants to the Access Channel Manager in the amount of \$2,000 on the first business day of each calendar month, to be used for purposes of studio rent and overhead. These grants shall be in year 2001 dollars, adjusted for inflation annually on the anniversary date of the Franchise Agreement pursuant to the most recent Consumer Price Index figures then available.

5.3. The Grantee shall provide additional grants to the Public Access Channel Manager. These grants shall be paid to the Public Access Channel Manager on the first business day of each calendar month. These grants shall be in the amount of \$258,000 each year (\$21,500 each month) in year 2001 dollars, adjusted for inflation annually on the anniversary date of the Franchise Agreement pursuant to the most recent Consumer Price Index figures then available.

5.4. The inflation adjustments specified in Sections 5.2 and 5.3 (to the extent they exceed the base amounts of \$2,000 and \$258,000 specified in those Sections) are subject to pass-through to subscribers and line itemization on subscriber bills pursuant to Federal Communications Commission regulations and other applicable federal law.

5.5. Title to any equipment purchased with the grants required under Section 5 shall be held by the Access Channel Manager, but shall be reassigned if the City designates a new Access Channel Manager pursuant to the Franchise Agreement.

6. INSTITUTIONAL NETWORK

6.1. **Intent.** The intent of this Section of the Settlement Agreement is to require design, construction and maintenance of an Institutional Network consisting of two elements: (1) direct dedicated fiber links (the "Fiber Network") and (2) cable modem connections using capacity dedicated throughout the Grantee's Cable System (the "Cable Modem Network") as further described herein. For purposes of this Settlement Agreement, the Fiber Network and Cable Modem Network will be referred to collectively as the "Institutional Network."

6.2. **The Work.** The Fiber Network shall consist of a high-capacity, broadband, general-purpose communications

network, employing modern broadband digital switching technology. The Cable Modem Network shall consist of a cable modem private network as described herein. The Institutional Network shall be capable of supporting a wide range of voice, data and video interfaces.

6.2.1. Grantee shall be responsible for installing and maintaining all of the components on the Grantee's side of the Demarcation Point that are required to provide the functionalities described in Exhibit 1. Grantee shall not be responsible for components on the City's side of the Demarcation Point. Major components of the Fiber Network on the Grantee's side of the Demarcation Point include but are not limited to digital network adapters (switches), backbone fiber optic links, Fiber Network management platform, system operating software and customer service interface equipment. The Fiber Network shall support priority allocation. Grantee shall not be responsible for the use, operation or management of the Institutional Network by the City or any Authorized User, except to the extent of providing connectivity between Demarcation Points.

6.2.2. The Fiber Network deployment shall include premises network access equipment with uplinks supporting data rates of 10/100 Mbps Ethernet and/or 622 Mbps OC-12C ATM UNI interfaces with a minimum committed information rate ("CIR") as specified in Exhibit 1. The CIR between the sites and City Hall shall be scalable to the Transport Link Capacity indicated in Exhibit 1 at no cost to the City if additional interfaces are added as discussed in Section 6.2.4. The facilities are to be connected by fiber optic lines. Exhibit 1 contains a list of the fourteen (14) sites that will comprise the Fiber Network, along with designation of the number and type of interfaces, the minimum CIR, and the transport link capacity. In addition, there will be a CIR of 622 Mbps, less the nominal overhead required for operation of the network, dedicated to the City's use between each of the North hub, South hub and Central hub.

6.2.3. The Grantee will provide Cable Modem Network as follows:

6.2.3.1. The Grantee will dedicate a cable modem termination system (CMTS) for use for the Cable Modem Network. The CMTS will connect to a dedicated 6 MHz Channel, to be designated by the Grantee, in the downstream direction and to 3.2 MHz of dedicated contiguous upstream capacity, to be designated by the Grantee. The Grantee may change the dedicated channels to be so used as long as such change does not impair the functionality of the Cable Modem Network and the Grantee absorbs all costs of or resulting from such change.

6.2.3.2. The Grantee will install a modem at each user location in Exhibit 2, including installation of a cable drop if necessary. The City shall be responsible for configuring user equipment with an Ethernet network interface card and IP address. The Grantee shall test each modem installation to ensure that, in the upstream direction, carrier to noise exceed 25 dB and carrier to ingress exceed 25 dB; and, in the downstream direction, carrier to noise exceed 35 dB, and carrier to ingress exceed 35 Db.

6.2.3.3. Upon request of the City, Grantee shall move any cable modem to a new service location at the City's expense, based upon a mutually agreed upon reasonable cost for the move and any necessary reconfigurations. The Communications Commissioner shall be responsible for requesting moves of service.

6.2.3.4. The City will supply IP addresses for each modem.

6.2.3.5. The Grantee shall interconnect the CMTS to a port designated by the City at City Hall. The capacity of the City connection to the CMTS shall be 100 Mbps or greater. Between the CMTS and the port designated by the City, the Cable Modem Network traffic shall at all times be electronically separate from the Fiber Network and other networks, either by using separate fibers and network switches or by use of separate virtual local area networks (VLAN).

6.2.3.6. The cable modem private network shall be designed so that only modems authorized by the Grantee and City can use the cable frequencies assigned to the City. The City shall be responsible for any additional encryption or encoding it deems necessary for its signal security.

6.2.3.7. Grantee will provide to each Cable Modem Network site a minimum throughput of 500 Kbps downstream and 128 Kbps upstream. The Grantee shall meter capacity usage and provide reports to the City upon request.

6.2.3.8. Additional Cable Modem Network sites may be added at the City's request at the City's expense, subject to mutual agreement between the City and the Grantee as to the reasonable costs resulting from the addition of such sites, including but not limited to CMTS costs resulting from increasing the total number of cable modem sites.

6.2.4. Under this Settlement Agreement, Grantee shall supply the City with user interfaces as shown in Exhibit 1. In addition, upon request by the City and on a schedule reasonably agreed upon by the City and the Grantee, the following interfaces shall be made available by the Grantee either through use or modification of initially installed equipment or through modular upgrade of that equipment (hereafter, the "Upgrade Hardware"): 10/100/1000 Mbps Ethernet, DS1, DS3, circuit emulation DS1, OC-3C ATM UNI, and full-motion NTSC video with associated camera control for pan, tilt and zoom function. The City shall pay the expense for the Upgrade Hardware (other than initially installed equipment) and its installation, integration, and testing, based upon mutual agreement between the City and Grantee as to the reasonable costs of the Upgrade Hardware and its installation, integration, and testing, such reasonable costs to reflect the lowest price offered by Grantee to any other customer for such equipment, installation, integration or testing.

6.2.5. Changes in the Work during the construction period within the general scope of this Section 6, consisting of reasonable additions, deletions, revisions or any combination thereof, may be ordered only by written change orders,

subject to mutual agreement where additional costs are reasonably expected to be incurred. If after such mutual agreement the City directs Grantee to perform such changes, Grantee agrees to do so.

6.2.6. The City and Grantee may mutually agree to install additional Fiber Network or Cable Modem Network sites, or to replace a Cable Modem Network connection with a Fiber Network connection, at mutually agreed costs to be paid by the City.

6.3. Ownership and Management

6.3.1. Ownership of the Institutional Network facilities provided by the Grantee hereunder shall remain with the Grantee. Such facilities may also be used by the Grantee for other purposes, in its sole discretion, to the extent not inconsistent with the City's use as provided in this Settlement Agreement, subject to this Settlement Agreement. All right, title and interest in all facilities and associated equipment provided by the City shall at all times remain exclusively with the City.

6.3.2. Prior to initial activation of the Fiber Network, Grantee shall either (a) obtain written waivers of liens (in a form reasonably acceptable to the City) in the fibers for the Fiber Network from any person that has a lien on any part of the Fiber Network, or (b) grant the City a security interest in such fibers. Such waivers or security interest shall protect the City's right to continue using the Fiber Network pursuant to this Settlement Agreement.

6.3.3. Grantee shall operate, maintain and repair any components of the Institutional Network between Demarcation Points and is responsible for any components between Demarcation Points. The City shall be responsible for operation, maintenance and repair of any user premises equipment, such as switches, servers, routers, or other active components, required on the City's side of the Demarcation Point.

6.4. Construction.

6.4.1. Concurrent with the System Upgrade, Grantee shall construct the Institutional Network to the locations listed in Exhibit 1.

6.4.2. In addition, Grantee shall construct and maintain a fiber connection between the Communications Division, 4971 Oakland, and the Water Division, 1640 S. Kingshighway. Such connection shall consist of single-mode fibers, installed to industry standards, terminated and labeled using industry standard connectors in equipment closets at reasonable mutually agreed locations at each site. The cost of this connection may be passed through to subscribers to the extent permitted by FCC regulations only if the City is unable to provide Grantee with a technically feasible means of crossing the Burlington Northern tracks without undergrounding. The City shall be responsible for providing any electronics required to light or use this connection.

6.4.3. The City shall have access to inspect and observe the Work at all times from commencement of the Work through its completion, in accordance with applicable law. The Grantee shall take all reasonable steps to provide such access when requested, provided, however, that such access shall not unreasonably impede efforts of the Grantee, its subcontractors or others engaged in the Work.

6.4.4. Grantee will provide the City with a design and relevant engineering support documentation for review and acceptance by the City not later than one hundred eighty (180) days after the effective date of this Settlement Agreement. Documentation shall include but not be limited to a list of materials, network diagram, map of fiber routing, identification of any critical circuits that the City may have designated in advance in writing, project plan and timetable, list of information required from the City, responsibilities of the City in network operation, Grantee's procedures for repair of network problems, Grantee points of contact, problem escalation procedure, forms for documentation of problems, and procedures for tracking problems and complaints.

6.4.5. Grantee shall continuously maintain at its local office for the benefit of the City one record copy of the design and relevant engineering support documentation marked to record on a current basis changes, selections and modifications made during construction. Additionally, Grantee shall maintain at its local office for the City any maps, specifications, and other required submittals.

6.4.6. Following commencement of construction of a phase of the Institutional Network, every three months until that phase of the Institutional Network is completed, Grantee shall provide detailed written reports to the City on the Grantee's progress in constructing the Institutional Network and shall meet with the City to discuss such progress.

6.4.7. Within six months after the effective date of this Settlement Agreement, the City and Grantee shall jointly develop an acceptance test plan for the Institutional Network. The acceptance testing to determine completion of Institutional Network construction shall be composed of two parts:

- (a) Physical inspection pursuant to Section 6.4.9;
- (b) End-to-end performance testing pursuant to Section 6.4.10.

6.4.8. Each of these inspections will lead to the initial operational testing of the network, develop the turnover documentation, and form a reference for future troubleshooting.

6.4.9. Physical Inspection. During the construction process, Grantee shall inspect the physical configuration

of the Institutional Network to monitor conformance with the Institutional Network design and applicable law. Inspection of the cable runs and components will be made to maintain the integrity of the design, and Grantee shall keep records of such inspections. Should a change be required, written documentation shall be developed that outlines the reason for the change.

6.4.10. Performance Testing. Construction of the Institutional Network shall include the following procedures:

(i) Grantee shall notify the City in writing at least fifteen days in advance of completion of construction of each site identified in Exhibit 1. The notice shall include the date Grantee is prepared to conduct OTDR and power meter tests to demonstrate that the fiber connectivity meets specifications. If directed by the City, the test shall be conducted in the presence of the City's designated observer.

(ii) The City shall also have the option of conducting a physical inspection of the construction and connections to the site. This inspection shall be conducted no later than the date of the test in paragraph (i).

(iii) If the connections to the site pass the performance test required by paragraph (i) above, and the City does not inform Grantee in writing within ten days that the physical inspection discloses errors in construction or installation or fails to conform with the approved design, the site shall be deemed accepted. Acceptance of a test shall not be unreasonably withheld. If the City does not accept the site test, it shall provide a written explanation of the reasons it does not accept the test. Grantee shall promptly correct any deficiencies in the Work and retest that site.

6.4.11. In addition, as part of the acceptance testing, Grantee shall demonstrate that the combined networks used to transmit and receive signals are operating and meet the standards for the Institutional Network as agreed in the design and operations document in Section 6.4.4. If the testing shows that there is a problem with the internal wiring or equipment for a location that is not the Grantee's responsibility, Grantee will so notify the City and the sites.

6.4.12. If any Work is found to be defective or not in accordance with this Settlement Agreement after a portion of the Work has passed the performance test, Grantee shall correct it promptly upon receipt of written notice from the City. Grantee shall pay all costs and expenses associated with correcting such work, including any additional testing and inspections that may be required.

6.4.13. Grantee shall design and operate the portion of the Institutional Network on its side of the Demarcation Point so as to provide reasonable protection against security breaches on Grantee's side of the Demarcation Point, as measured by standard industry practice. The City network shall be isolated from other network traffic by use of VLAN or other equivalent technology.

6.5. Time Period.

6.5.1. Grantee shall complete Institutional Network construction, including all testing as specified in Section 6.4, and make the Institutional Network fully operational to all sites, within 34 months after the effective date of the Franchise Agreement.

6.5.2. The City's rights to use the Institutional Network as specified herein shall commence on the date the Settlement Agreement is effective, subject to the gradual construction of the Institutional Network concurrent with the System Upgrade as specified in Section 6.4.1, and shall continue throughout the term of this Settlement Agreement.

6.5.3. If the Grantee's Franchise terminates prior to the expiration date of the Franchise Agreement, the Grantee, or any successor in interest, shall continue meeting the Grantee's obligations as specified in this Settlement Agreement until such expiration date, and is hereby authorized by the City to do so

6.6. Use.

6.6.1. So long as they comply with all material obligations under this Settlement Agreement, the City and any Authorized Users shall have the indefeasible right to use the Institutional Network pursuant to this Settlement Agreement.

6.6.2. The City, in its discretion, may permit the following entities to be Authorized Users:

- (a) the City, and any agency, department, division, or office thereof;
- (b) all political subdivisions of the State located within the external boundaries of the City, to the extent participation by these entities is useful for lawful City activities.

6.6.3. The City and Authorized Users may use the Institutional Network solely for noncommercial purposes, and neither the City nor any Authorized User shall resell access to the Institutional Network. Grantee may use any portion of the Institutional Network not used by the City or Authorized Users for its own purposes, in its sole discretion, subject to applicable law and compliance with its obligations under this Settlement Agreement, as long as such other use does not interfere with use by the City and Authorized Users.

6.6.4. The City shall retain sole and exclusive title to any cable installed by it on the City side of the

Demarcation Point. Grantee shall also provide the City with 24-hour, 365-day access to each Demarcation Point for the purposes of maintaining the City's cable and splices.

6.6.5. The City may attach such devices to the Institutional Network on its side of the Demarcation Point as it deems appropriate, provided that such devices do not adversely affect the technical integrity of the Institutional Network. In particular, the City may, at its own expense, to establish connections between the Institutional Network and the Internet, the public switched telephone network, or other public or private networks, provide for connection to such networks by Authorized Users over the Institutional Network. The Grantee shall reasonably cooperate with the City in making any such connections.

6.6.6. There shall be no charge to the City or any other Authorized User for the construction, operation, maintenance, or use of the Institutional Network pursuant to this Settlement Agreement, except as may be expressly set forth in this Settlement Agreement.

6.7. Maintenance and Repair.

6.7.1. In meeting its obligations hereunder, Grantee shall use trained and qualified personnel, and comply with all applicable laws.

6.7.2. Grantee shall conduct reasonable testing of the Institutional Network, on a schedule as reasonably agreed to by the parties, to demonstrate continuing compliance with the requirements of this Section 6.

6.7.3. At any time that any portion of the Institutional Network for which Grantee is responsible is known to fall below the performance standards set forth herein but no Service Outage has occurred, Grantee shall begin action to restore operation to those standards within four hours and complete such action as soon as reasonably possible.

6.7.4. Grantee will provide technical support for the Institutional Network necessary to meet Grantee's obligations under this Settlement Agreement 24 hours a day, seven days a week. Such support will be provided through "on-call" technicians who are knowledgeable as to the Institutional Network, carry pagers, will respond to all pages within twenty minutes, and will address Service Outages within sixty minutes after being paged. A Service Outage will be corrected as soon as reasonably possible.

6.7.5. The Grantee shall be responsible for programming, operation and maintenance of the CMTS. The Grantee shall respond within two (2) hours to carry out repairs or troubleshooting, and the Grantee shall use best efforts to restore full functionality within four (4) hours.

6.7.6. Grantee shall set up mechanisms and procedures for all Authorized Users to quickly and easily report Institutional Network problems. These trouble or service calls shall be documented to demonstrate compliance with the requirements of this Settlement Agreement. Grantee shall provide monthly service call reports to the City, including a breakdown of reasons for and resolutions of problems, as well as call handling efficiency.

6.7.7. Notwithstanding the staffing, testing, equipment and response requirements set forth herein, Grantee shall provide in-house and/or contractor staff, spares and equipment backup, test and maintenance equipment, and take additional steps necessary to ensure that the Institutional Network can transmit signals reliably up to the following standards:

6.7.7.1. Grantee will provide Authorized Users the highest level of service, reliability, repair and maintenance consistent with industry standards.

6.7.7.2. Institutional Network paths carrying critical circuits (as identified from time to time by the City) shall receive the highest priority in Grantee's Institutional Network repair program.

6.7.7.3. Institutional Network reliability for all channels and transmission links between any two Demarcation Points, plus equipment for which Grantee is responsible at Authorized User premises, shall meet or exceed 99.8% for the Fiber Network and 98% for the Cable Modem Network. This shall be taken to mean that the total cumulative Service Outage time at any Institutional Network site attributable to a failure of that portion of the Institutional Network for which Grantee is responsible shall not exceed 17.5 hours over a period of one year for the Fiber Network and 175.2 hours over a period of one year for the Cable Modem Network. *Force majeure* conditions, as defined herein, or service Outages for normal maintenance or testing that have been scheduled in advance by Grantee with the concurrence of the City shall not be included in this total cumulative Service Outage time.

6.7.7.4. On a password-protected Web site or other format mutually agreed by the City and the Grantee, Grantee shall provide the real-time live-link status and available throughput of each Institutional Network link for access by staff authorized by the City.

6.7.8. The City may inspect the Institutional Network, and require appropriate testing, to determine whether the Institutional Network is functioning properly or whether repairs have been properly completed. Grantee will cooperate with the City to allow the City access to facilities as necessary to maintain and monitor signal and fiber quality on the Institutional Network.

6.7.9. The City agrees to allow Grantee to co-locate its own Grantee-owned network equipment and software at City locations and spaces designated for the location of City Fiber Network equipment, provided that (a) such additional equipment or

software does not appreciably expand the space taken up by the equipment and software used for Institutional Network purposes, and (b) such co-located equipment and software shall not interfere with or impair the City's use of the Institutional Network pursuant to this Settlement Agreement. Grantee will have reasonable access to and use of such locations as necessary to enable Grantee to operate, maintain, manage and repair its equipment and software located on City premises, provided such access does not interfere with City operations. The insurance requirements specified in Section 6.9 of this Settlement Agreement shall extend to this equipment and Grantee's access thereto, and Grantee shall indemnify the City as provided in Section 6.9 of this Settlement Agreement against any liability, claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the presence or use of such equipment at City locations and spaces or from the Grantee's access thereto, including but not limited to any third-party claims based on the City's permitting such co-location.

6.8. Performance and Warranty.

6.8.1. Grantee shall perform the Work strictly in accordance with this Settlement Agreement.

6.8.2. Grantee shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

6.8.3. Grantee shall supervise and direct the Work, using the Grantee's best skill and attention. Grantee shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Settlement Agreement, except to the extent otherwise specifically provided in this Settlement Agreement or the Franchise.

6.8.4. If Grantee performs any of the Work knowing it involves a recognized error, inconsistency or omission in this Settlement Agreement without notice to and approval of the City, Grantee shall bear responsibility for such performance and shall bear the cost of correction.

6.8.5. Grantee warrants to the City that all labor furnished to progress the Work under the Settlement Agreement will be competent to perform the tasks undertaken, that the product of such labor will be free from defects not inherent in the quality required or permitted, that the Work will conform with requirements of this Settlement Agreement, that the materials and equipment furnished under the Settlement Agreement will be of good quality and new unless otherwise specifically required or permitted by this Settlement Agreement. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Grantee's warranty excludes remedy for damage or defect caused by the City, modifications or maintenance or abuse not executed by Grantee or its authorized agents, improper operation by the City, or normal wear and tear under normal usage.

6.9. Insurance, Indemnity, and Bond

6.9.1. Grantee shall maintain all insurance and bonds required under the Franchise Agreement. Bonds required under the Franchise Agreement shall be security for performance of obligations under this Settlement Agreement; just as though the bonds set forth therein had been required hereunder.

6.9.2. To the fullest extent permitted by law, Grantee shall protect, defend, indemnify and hold harmless the City from and against liability, claims, damages, losses and expenses, including reasonable attorney's fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damages, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or to destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or part by negligent acts or omissions of Grantee, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder. Notwithstanding anything herein to the contrary, if any such injuries to persons or property arising out of the performance of this Settlement Agreement are caused by or result from the concurrent negligence of Grantee or its agents or employees, and of the City and its agents or employees, Grantee's indemnification obligations, if any, apply only to the extent of the negligence of Grantee, its agents or employees.

6.9.3. Grantee's obligation under this section shall include indemnification for claims made by the Grantee's own employees or agents. In the event the City incurs any judgment, award and/or cost arising therefrom including reasonable attorneys' fees to enforce the provisions of this Settlement Agreement, all such fees, expenses, and costs shall be recoverable from Grantee.

6.9.4. In claims against any person or entity indemnified hereunder made by an employee of the Grantee, by a subcontractor, by anyone directly or indirectly employed by them or by anyone for whose acts they may be liable, the indemnification obligation hereunder shall not be limited by a limitation on any amount or type of damages, compensation or benefits payable by or for the Grantee or a subcontractor under Workers Compensation Acts, Disability Benefit Acts and other employee benefits acts.

6.10. Subcontractors.

6.10.1. Grantee shall be responsible to the City for any and all acts or omissions of the Grantee, its employees, subcontractors and others engaged in the Work on behalf of Grantee as though the Work had been performed by Grantee itself.

6.10.2. All subcontractors used by Grantee for purposes of this Settlement Agreement shall be licensed to do

business in the City pursuant to applicable law. Grantee shall not enter into a subcontract with a proposed subcontractor with reference to whom the City has made timely and reasonable objection. Grantee shall not be required to subcontract with any party to whom Grantee has objection.

6.10.3. All subcontracts shall afford Grantee rights against the subcontractor which correspond to those rights afforded to the City against the Grantee herein.

6.11. Other Provisions.

6.11.1. Grantee shall keep Work sites reasonably clean during performance of the Work. Upon final completion of Work, Grantee shall clean the site and move all waste, together with all of Grantee's property therefrom.

7. FRANCHISE FEE DISPUTE

Grantee and City hereby resolve all disputes and disagreements regarding Grantee's franchise fee obligations for the period January 1, 1995 through December 31, 1997 and all issues relating to penalties and interest related thereto. To that end Grantee will pay, upon written instruction from the City, to a designee of the City, \$150,000 on or before January 4, 2002, and an additional \$150,000 on or before July 1, 2002, as financial support of a legitimate independent job skills/internship training program for telecommunications sanctioned by the City, which may be overseen by the United States Department of Labor or some other appropriate monitor, or, in the event such instruction from the City is not received on or before December 15, 2001, Grantee will make such payments on such dates to the City. Such payment shall constitute complete satisfaction and settlement of all disputes regarding franchise fee amounts due for the period January 1, 1995 through December 31, 1997, and any penalties and interest related thereto. This obligation is in the nature of a settlement and none of the amounts paid pursuant to this Section 7 may be passed through to subscribers. The City will join with Grantee in appropriate public promotion and appreciation of Grantee's commitment under this Section 7 to the training program.

8. RATES AND FRANCHISE FEES

8.1. Except as expressly set forth in this Settlement Agreement, no costs, payments, or other consideration provided pursuant to this Settlement Agreement shall be passed through to subscribers in any form, itemized on subscriber bills, or for rate regulation purposes treated as external costs subject to pass-through, nor have any other adverse effect on subscriber rates. The Grantee agrees that it will not raise any claim or defense to the contrary.

8.2. No costs, payments, or other consideration provided pursuant to this Settlement Agreement shall be construed to constitute a franchise fee, or to be subject to any limitations on Franchise fees under applicable law or in the Franchise Agreement. The Grantee agrees that it will not raise any claim or defense to the contrary.

9. ENFORCEMENT

Upon violation of this Settlement Agreement, any party may proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity, for damages, injunctive relief, or any other lawful relief, including but not limited to an action for specific performance of any provision of this Settlement Agreement.

10. REPRESENTATIONS AND WARRANTIES

Grantee hereby represents and warrants that at the time of the execution of this Settlement Agreement: (a) it is a corporation or partnership duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; (b) the Grantee's signatories to this document are authorized to execute this Settlement Agreement on behalf of the Grantee; and (c) the execution and delivery of, and its performance under, this Settlement Agreement are within Grantee's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite corporate or partnership action on the part of Grantee and are not in contravention of Grantee's charter, bylaws, and/or other organizational documents.

11. MISCELLANEOUS PROVISIONS.

11.1. Successors and Assigns: This Settlement Agreement shall be effective and binding upon any successors or assignees, with respect to the Cable System, of the Grantee.

11.2. Voluntary Agreement: This Settlement Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Settlement Agreement.

11.3. Force Majeure and Other Delays. Grantee shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults were caused by extraordinary circumstances reasonably beyond the ability of the Grantee to control. Grantee shall not be held in default under, or in noncompliance with, the provisions of this Settlement Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults were caused by work delays required by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, provided, however, that the Grantee shall use its best efforts to prevent such delays.

11.4. Severability: If any term, condition, or provision of this Settlement Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the Franchisee and the City. If the terms of this Settlement Agreement are materially altered due to changes in governing law, then the parties shall negotiate in good faith to reconstitute this Settlement Agreement in a way consistent with then-applicable law in a form that, to the maximum extent possible, is consistent with the original intent of Grantee and the City and preserves the benefits bargained for by each party.

11.5. Counterparts: This Settlement Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

11.6. Governing Law: This Settlement Agreement shall be governed in all respects by the law of the State of Missouri.

11.7. Captions and References: The captions and headings of sections throughout this Settlement Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Settlement Agreement. Such captions shall not affect the meaning or interpretation of this Settlement Agreement.

AGREED TO THIS ____ DAY OF _____, _____.

CITY OF ST. LOUIS, MISSOURI,
a municipal corporation of Missouri

By: _____
Larry D. Stone
Communications Commissioner

By: _____
Darlene Green
Comptroller

APPROVED AS TO FORM:

City Counselor

ATTEST:

(Seal)

City Register

ST. LOUIS TELE-COMMUNICATIONS, INC.

By: _____
[name & title of signatory]

ATTEST:

[Corporate secretary or other appropriate person]

EXHIBIT 1

List of Fiber Network Sites

Site	Address	Number of Interfaces	Type	Minimum Committed Information Rate* (Mbps)	TransportLink Capacity* (Mbps)
City Hall	1200 Market	1	OC-12C	600	622
Personnel	1300 Convention Plaza	8	Ethernet	100	155
Police Area #3	4014 Union	8	Ethernet	100	155
Medium Security	7600 Hall Street	8	Ethernet	100	155
Health Dept	634 N. Grand	8	Ethernet	100	155
Fire Headquarters	1421 N. Jefferson	8	Ethernet	100	155
Parks	5600 Clayton	8	Ethernet	100	155
Comm. Div	4971 Oakland	8	Ethernet	100	155
Police Area #2	991 N. Jefferson	8	Ethernet	100	155

New Jail**	11 th and Walnut	8	Ethernet	100	155
Water Division	1640 S. Kingshighway	8	Ethernet	100	155
Police Area #1	3167 Sublette	8	Ethernet	100	155
South Refuse and Animal Regulation	4100 S. 1 st	8	Ethernet	100	155
Street Dept	1900 Hampton	8	Ethernet	100	155

*Less the nominal overhead required for operation of the network.

**Service to this site will not begin until completion of the System Upgrade for the Downtown Area, unless existing conduit under Tucker Blvd. can be used to permit completion during the non-Downtown Area System Upgrade.

EXHIBIT 2

List of Cable Modem Network Sites

Community Centers	
Buder	2900 Hickory
Cherokee	3200 South Jefferson
Dunn-Marquette	4025 Minnesota
Soulard	1614 South Eight
12th & Park	1410 South Tucker
Parkside	3126 Alfred
West End	5250 Enright / 724 Union
Wohl	1515 N. Kingshighway @MLK
Tandy	4206 Kennerly
Gamble	2907 Gamble
Neighborhood Stabilization Offices	
Shaw / NSO	5329 Columbia Room #123
McKinley / NSO	2156 Russell 3rd Fl Northwest
Stevens/NSO	1033 Whittier Room #118
Ford/ NSO	5599 Ridge Room # 108
Health Division Satellite Facilities	
Vector/ Lead	1212 North Thirteenth
Courtney Center	1717 Biddle
F. Hill Center	5541 Riverview
Homer G. Phillips Center	2425 Whittier
Starkloff Center	2220 Lemp

List of Cable Modem Network Sites (Continued)			
Miscellaneous			
Family Court Juvenile Court	3287 Enright 920 N. Vandeventer		
EMS	2634 Hampton		
Water/ ESD	10450 Riverview		
North Refuse / ESD	100 East Grand		
Compton Hill Reservoir ¹	Grand & Russell		
Towing Services	7410 Hall Street		
Fleet Services (Police)	3919 Laclede		
Family Services	3545 Lindell		
Housing Authority	4100 Lindell		
Air Pollution/ Forestry	1415 North 13th		
Election Board*	208 South Tucker		
CDA / SLDC*	1015 Locust		
Fireman's Retirement	1601 South Broadway		
Fire Engine Houses			
# 10 District 1	4161 Kennerly	63113	
# 17	3238 Martin L King	63115	
# 9	814 La Beaume	63102	
# 8	1501 Salisbury	63107	
# 5	2123 North Market	63106	
# 7 District 2	2600 LaSalle	63104	
# 11	2224 South Seventh	63104	
# 1	2910 South Jefferson	63118	
# 2	314 South Tucker	63102	
# 31 District 3	4408 Donovan	63109	
# 35	5000 S. Kingshighway	631	
# 36	5450 Arsenal	63139	
# 22	1229 McCausland	63117	
# 6	5749 Manchester	63110	
#14 District 4	3523 Magnolia	63118	
# 23	6500 Michigan	63111	
# 19	6624 Morganford	63116	
# 34	8227 South Broadway	63111	
# 32	3500 South Grand	63118	
# 4	4425 South Compton	63111	
# 29 District 5	200 South Vandeventer	63108	
# 13	1400 Shawnut Place	63112	
# 30	521 DeBaliviere	63112	
# 28	4810 Enright	63108	

Fire Engine Houses (Continued)		
# 26	4520 Margaretta	63115
# 33	8300 North Broadway	63147
# 24	5245 Natural Bridge	63115
# 27	5435 Partridge	63120
# 20	5600 Prescott	63147
# 12	5214 West Florissant	63115

¹If there is existing usable conduit of a suitable size from the demarcation point of the building to within 10 feet of the existing cable plant.

*Service to this site will not begin until completion of the System Upgrade for the Downtown Area.

BOARD BILL #79

INTRODUCED BY ALDERMAN TERRY KENNEDY

An ordinance relating to cable television; reported on by the Board of Public Service; granting a renewal cable television franchise for a term of fifteen years to St. Louis Tele-Communications, Inc., a Missouri corporation, providing cable television services as AT&T Broadband, for the upgrading, operation and maintenance of a cable television system in the City of St. Louis, upon specified terms and conditions, with definitions of terms; and providing for the regulation of such franchise.

WHEREAS, in 1984 pursuant to Ordinance 59197 the City of St. Louis awarded two cable television franchises (the "prior franchises") for separate areas of the City comprising the entire area of the City to STL Cablevision Partners and St. Louis City Communications, Inc.; and

WHEREAS, in 1989 pursuant to Ordinance 61093 the City consented to the transfer of the prior franchises from the original grantees to St. Louis Tele-Communications, Inc., a Missouri corporation (the "Grantee"), which was owned by Tele-Communications, Inc. ("TCL"); and

WHEREAS, the expiration dates of the prior franchises have been extended by ordinances, the last of which is Ordinance 65186, which extended such expiration dates until August 13, 2001; and

WHEREAS, pursuant to 47 U.S.C. Section 546 and Ordinance 64882, on January 28, 2000 the City approved a Needs Assessment concerning the needs of residents and the City with respect to cable television in future years; and

WHEREAS, pursuant to 47 U.S.C. Section 546 and Ordinance 64882, the City on January 28, 2000 issued a Request For Renewal Proposal to the Grantee; and

WHEREAS, thereafter representatives of the City and of the Grantee have discussed proposed terms of a renewal franchise; and

WHEREAS, the Board of Aldermen finds and believes that the terms and conditions of the renewal franchise herein set forth are in the best interests of the City and its residents; and

WHEREAS, the Board of Public Service has made a report to the Board of Aldermen on this bill pursuant to Article XIX Section 1 of the Charter;

BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:

SECTION ONE. A Franchise is granted to Grantee for the construction, operation and maintenance of a Cable System upon the terms and conditions set forth in, and effective upon the effective date of, a Franchise Agreement between the Grantee and City, in the form attached hereto as Exhibit A, incorporated herein by this reference. The Communications Commissioner and Comptroller are hereby authorized and directed to execute, on behalf of the City, the Franchise Agreement in the form attached hereto as Exhibit A.

EXHIBIT A

CABLE TELEVISION FRANCHISE AGREEMENT

THIS AGREEMENT is made this ___ day of _____, _____, by and between the City of St. Louis, a municipal corporation of the State of Missouri, organized and existing under its Charter and the constitution and laws of the State of Missouri and St. Louis Tele-Communications, Inc., a Missouri corporation.

SECTION ONE. Definitions and Rules of Construction.

A. Definitions

For the purposes of this Agreement, unless otherwise specified, the following terms, phrases, words, and their derivations have the

meaning given herein, unless the context clearly indicates that another meaning is intended:

1. **“Cable Ordinance”** or **“Ordinance”** means Ordinance ____ (Board Bill ____), as it may be amended from time to time.
2. **“Cable System”** or **“System”** means any cable system (as that term is used in the Cable Ordinance) which Grantee is authorized to construct, operate and maintain pursuant to this Agreement.
3. **“City”** means the City of St. Louis, a municipal corporation of the State of Missouri, organized and existing under its Charter and the constitution and laws of the State of Missouri.
4. **“Downtown Area”** means the portion of the Franchise Area specified in the description attached hereto as Exhibit 1.
5. **“Franchise”** means the franchise (as that term is used in the Cable Ordinance) granted to the Grantee subject to the terms and conditions of this Agreement and applicable law.
6. **“Franchise Area”** means the entire area within the jurisdictional boundaries of the City of St. Louis.
7. **“Franchise Agreement”** or **“Agreement”** means this Agreement and any amendments, exhibits or appendices hereto.
8. **“Franchise Effective Date”** means the date on which the Agreement is lawfully executed by both parties as provided under Section Two of this Agreement and in the manner required by Section Nine of the Cable Ordinance.
9. **“Grantee”** means: St. Louis Tele-Communications, Inc., a Missouri corporation, currently providing services as AT&T Broadband.
10. **“Gross Revenue”** means all revenues derived directly or indirectly by the Grantee, its affiliates, subsidiaries, parents, and any entity in which the Grantee has a financial interest, from or in connection with the operation of its Cable System to provide Cable Services. This definition shall be construed so as to include all gross revenues to the maximum extent permitted by federal law, except to the extent specifically excluded in Section One.A.10(2).
 - (1) Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any basic, optional, premium, per-channel, per-program service, or cable programming service; revenues from Internet access over the Cable System (to the extent such services are lawfully considered Cable Services under applicable law); installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the Cable System; revenues from rentals or sales of converters or other equipment; studio rental, production equipment, and personnel fees; advertising revenues; barter; revenues from program guides; and revenues from home shopping and bank-at-home channels.
 - (2) Gross Revenues shall not include (a) any taxes on services furnished by the Grantee herein imposed directly upon any Subscriber or user by the City, the State of Missouri or the governmental unit and collected by such Grantee on behalf of said governmental unit. A Franchise fee is not such a tax; (b) any bad debt, provided, however, that all or any part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected.
 - (3) Any amounts includable as Gross Revenues that are received by an Affiliate, subsidiary, parent, or any entity in which the Grantee has a financial interest shall not be counted as Gross Revenues to the extent that such amounts are also received directly by the Grantee, to ensure that no such revenue is counted twice.
11. **“Node”** means a Facility on a Cable System where transmission by light over Fiber Optic cable is converted to transmission by electricity over coaxial cable, or vice versa.
12. **“Prior Franchises”** means the franchises granted pursuant to Ordinance No 59197, which were both held by the Grantee immediately prior to the Franchise Effective Date.
13. **“System Upgrade”** means the improvement and enhancement in the technology and service capabilities made by the Grantee to its Cable System described in Section Seven.B herein.
14. **“Transfer”** shall mean any transaction in which: (A) any direct ownership or other right, title, or interest of more than ten percent (10%) in the Grantee or its Cable System is transferred, sold, assigned, leased, or sublet; or (B) there is any change in control of the Grantee; or (C) the rights and/or obligations held by the Grantee under the Franchise are transferred, directly or indirectly, to another Person; or (D) any change or substitution occurs in the managing general partners of the Grantee, where applicable.
 - (1) “Control” for purposes of this Section One.A.14 means the legal or practical ability to exert actual working control over the affairs of the Grantee either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, a change in the entity with management responsibility over the Cable System, or in any other manner.

- (2) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation of twenty percent (20%) or more of the ownership of the Grantee indirectly, through a change in ownership of its owners, by any person or group of persons acting in concert, none of whom already own or control fifty percent (50%) or more of the ownership of the Grantee, singularly or collectively. For purposes of this Section One.A.14(2), however, an acquisition of publicly traded stock in a publicly traded corporation shall not result in such a rebuttable presumption even if it reaches or exceeds the twenty percent (20%) level of ownership of the Grantee.
- (3) The Grantee is responsible for ensuring that the intent of Section 7 of the Cable Ordinance is carried out. If for any reason an event occurs that would require the City's approval under that Section, whether or not such event is directly or indirectly within the Grantee's control, such event shall constitute a "Transfer" for purposes of this Agreement and any applicable law.
- (4) Notwithstanding the foregoing, "Transfer" does not include:
 - (a) disposition or replacement of worn out or obsolete equipment, property or facilities in the normal course of operating the Cable System, including the renewal or extension of equipment or property leases and contracts; or
 - (b) acquisition, transfer, sale or other disposition of leases, licenses, easements, and other interests in real property in the normal course of operating the Cable System and not involving the relinquishment of any right or power affecting the Grantee's ability to provide services in whole or in part; or
 - (c) restructuring of ownership interests among entities ultimately wholly owned by the ultimate owners of the Grantee, provided that the Grantee provides signed written notice of such restructuring at least thirty (30) days in advance which (i) demonstrates that the conditions of this exception have been satisfied and (ii) warrants and represents that such restructuring will not have a material adverse effect on system rates, services, financial resources, management, or operations.

B. Rules of construction

Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

1. Except as otherwise provided herein, the definitions and word usage set forth in the Cable Ordinance and the customer service ordinance adopted concurrently with this Agreement are incorporated herein and shall apply in this Agreement. Unless otherwise expressly stated, words not defined herein or in the Ordinance shall be given the meaning set forth in Title 47 of the United States Code, as amended, or if not defined therein, Chapter 47 of the Code of Federal Regulations, or, if not defined therein, their common and ordinary meaning.
2. Words importing the singular number include the plural number and vice-versa.
3. Words in the present tense include the future tense and vice versa.
4. The masculine gender includes the feminine gender and vice versa.
5. All references to particular sections are references to sections of this Agreement.
6. The headings herein are solely for convenience of reference and do not constitute a part of this Agreement nor do they affect its meaning, construction or effect.
7. The word "shall" as used herein is always mandatory and not directory, and the word "may" as used herein is permissive.
8. "Applicable law" shall include but is not limited to applicable City ordinances, subject to the provisions of Section Four.E and Section Fifteen.
9. The first letters of terms may be capitalized for convenience, but failure to capitalize a letter shall not affect the meaning.

SECTION TWO. Grant of Franchise; Effective date.

Subject to the terms and conditions of this Franchise Agreement, the Cable Ordinance, and other applicable law, a Franchise is granted to Grantee for the construction, operation and maintenance of a Cable System in the Public Rights-of-Way within the Franchise Area, for the purpose of providing Cable Service. The Franchise does not take the place of any other franchise, license, or permit which the City may lawfully require of Grantee. Neither the Franchise nor the Franchise Agreement grant any authority for the Grantee to use the Public Rights-of-Way for any purposes other than provision of Cable Service, except to the extent this Agreement may expressly and specifically provide that the Grantee may provide other services. Nothing herein shall prevent the Grantee from using its Cable System to provide non-cable services, provided that any and all authorizations lawfully necessary to use the City's Public Rights-of-Way to provide such services under applicable law have been obtained. No privilege or power of eminent domain is bestowed by the Franchise or this Agreement. This Franchise will not take effect unless and until:

- A. The Grantee executes and files its acceptance of the Franchise in the time and the manner prescribed in Section Sixteen

of this Agreement, and

B. The Grantee meets each and every condition prescribed by Section Sixteen, in the time prescribed by that section.

SECTION THREE. Term of Franchise

The Franchise is for a term of 15 years, beginning on the Franchise Effective Date and subject to renewal pursuant to applicable law.

SECTION FOUR. Franchise conditions and limitations.

A. The Franchise is subject to forfeiture or revocation as provided herein and in the Cable Ordinance.

B. Grantee is subject to other remedies and sanctions as provided herein.

C. The Franchise is non-exclusive, as required by Article XIX § 1 of the City's Charter and other applicable law. The City shall comply with the provisions of Section Twelve(E) of the Cable Ordinance regarding competitive franchises.

D. The Grantee shall comply with Ordinance _____ (BB 76) and Ordinance _____ (BB 77), each as adopted on _____, 2001, and all other applicable law, subject to Section Four.E and Section Fifteen hereof.

E. Grantee, by its acceptance of the Franchise, agrees and acknowledges that pursuant to this Agreement and the Cable Ordinance, it will at all times during the life of its Franchise be subject to the lawful exercise of the City's police power, authority lawfully to levy any nondiscriminatory taxes on any activity conducted by Grantee, or other lawful authority, whether exercised by ordinance or otherwise. Nothing contained in this Franchise shall be deemed to prohibit in any way the right of the City lawfully to levy any nondiscriminatory taxes on any activity conducted by Grantee.

F. Grantee agrees that all privileges prescribed by the Franchise are subordinate to any prior lawful occupancy of the public streets. The City reserves the right reasonably to designate where Grantee's facilities are to be placed within the public ways.

G. Nothing in this Agreement in any way impairs or waives any right or power of the City to acquire the property of the Grantee by purchase at a price reflective of its fair market value as an ongoing concern (provided that in no event is the Franchise itself to enter as an element into such compensation) or such other price as may be required pursuant to applicable law or ordinances, or through the exercise of the power of eminent domain pursuant to Missouri law.

H. As long as Internet access provided over the Cable System is deemed to be "cable service" under applicable law, the Grantee shall comply with all applicable requirements of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 521 *ff.*, regarding such service.

SECTION FIVE. Construction schedule and conditions.

As a condition to the right to exercise its Franchise and its rights thereunder, the Grantee covenants as follows:

A. Grantee shall extend the System Upgrade throughout the Franchise Area as rapidly as practicable, but, in any event, shall meet the following upgrade schedule.

1. Within 34 months after the Franchise Effective Date, the Grantee shall complete the System Upgrade for all parts of the City except for the Downtown Area, and shall complete all the construction required by Section Seven.D. The Grantee shall begin construction of the System Upgrade within nine months after the Franchise Effective Date.
2. Within 46 months after the Franchise Effective Date, the Grantee shall extend cable service to the Downtown Area, except that service shall be activated to certain specified areas earlier as specified in Section Five.A.3.
3. Notwithstanding the time period specified in Section Five.A.2, the Grantee shall activate Cable Service to the Washington Avenue and Cupples Station areas of the City at the locations specified in Exhibit 2 hereto within twelve months after the Franchise Effective Date.
4. Within twelve months after the Franchise Effective Date, the Grantee will activate a two-way fiber connection from City Hall, 1200 Market Street, to 4971 Oakland, so that the City can cablecast live meetings of the Board of Aldermen on a Government Access channel.

B. The Grantee shall submit a construction plan which consists of maps of the entire Franchise Area and clearly delineates the sequence and schedule of the System Upgrade to the Agency six (6) months after the Franchise Effective Date. The Grantee shall file thereafter a map and progress report with the Agency at the close of each calendar quarter until the System Upgrade is complete, and subsequently at the close of each calendar year, showing the exact areas of the City being served by the Cable System and the location and identification of major component parts of the Cable System.

C. The Grantee shall promptly notify the Franchise Agency of any delays known or anticipated in the System Upgrade. Such notice shall be in writing and shall explain in detail the exact conditions responsible for the delay, the circumstances beyond Grantee's control that prevent compliance, and the specific remedies and methods the Grantee has undertaken to correct the conditions causing

the delay. Failure on the part of the Grantee to meet the deadlines set forth in Section Five.A, shall be grounds for termination of its Franchise pursuant to the terms of the Cable Ordinance and this Agreement; provided, however, that the Board of Aldermen may extend the time for the commencement and completion of construction and installation and service to Subscribers for additional periods in the event the Grantee, acting in good faith, experiences delays by reasons of circumstances beyond its control.

D. Following the commencement of the System Upgrade, every three months until the construction is completed, the Grantee shall meet with the Franchise Agency to provide an update on the progress of the System Upgrade and to integrate the Grantee's work as far as practicable with the City's development process and street work, unless the Franchise Agency waives such meeting. Upon request, the Grantee shall provide detailed written reports to the Franchise Agency on the Grantee's progress in construction.

E. To ensure that Subscriber service improves prior to the System Upgrade, the Grantee shall implement the preventive maintenance and remediation plan described in Exhibit 3.

SECTION SIX. System performance.

As a condition to its right to exercise its Franchise and its rights thereunder, the Grantee covenants as follows:

- A. The Grantee will design, install and operate its cable television system so that the Cable System is at all times:
1. Capable of continuous twenty-four (24) hour daily operation;
 2. Capable of operating over an outdoor temperature range of -20E F to 120E F without catastrophic failure or irreversible performance changes over variation in supply voltage from 105 to 130 volts AC;
 3. Capable of meeting all specifications as set forth herein over an outdoor temperature range of 0E F to 100E F over variations in supply voltages from 105 to 130 volts AC;
 4. Operated in such a manner as to avoid causing unlawful interference with reception of off-the-air signals by non-Subscribers;
 5. In full compliance with the technical standards of the Federal Communications Commission.
- B. Performance Monitoring.
1. Test procedures used in verification of the performance criteria set forth herein shall comply with all applicable Federal Communications Commission ("FCC") rules and regulations.
 2. The results of such tests shall be filed with the Franchise Agency within thirty days after completion of each test. Each such filing shall specify the procedures used and shall explain in detail any instances of noncompliance, their actual or likely scope or causes, and Grantee's recommendation of the best measures to correct the noncompliance.
 3. If complaints received or other evidence indicate an unresolved controversy or significant noncompliance with any applicable technical standards, the Agency may require additional tests, full or partial repeat tests, or tests involving a specific Subscriber's terminal. Such tests will be limited to the particular matter in controversy. The Agency will endeavor to arrange its requests for special tests so as to minimize hardship or inconvenience to Grantee or to its Subscribers.
 4. The Grantee shall notify the Agency in advance of tests for compliance with FCC standards. The Agency may have representatives present to observe such tests.
 5. The results of annual performance tests in accordance with FCC rules and regulations shall be retained by the Grantee for at least five (5) years and shall be available for inspection by the Franchise Agency during business hours at Grantee offices in the City upon twenty-four hours' notice. Copies of such test results shall be promptly provided upon the Agency's request.
 6. Grantee shall conduct monthly tests of the emergency alert system, in conjunction with the City department designated for such testing.
 7. Grantee and the City shall conduct system performance tests pursuant to Exhibit 4.

SECTION SEVEN. Facilities and equipment; access requirements.

As a condition to its right to exercise its Franchise and its rights thereunder, the Grantee covenants as follows:

A. The Grantee is authorized and required to operate its existing Cable System, and to provide service substantially equivalent to its existing service, within the City as of the Franchise Effective Date, until such time as the System Upgrade is carried out, as provided herein. Such existing Cable System shall have a minimum capacity of fifty-four (54) channels.

B. System Upgrade

1. The Grantee shall upgrade its Cable System pursuant to the System Upgrade requirements in this Section Seven.B.
 2. The upgraded Cable System shall have a minimum bandwidth of 750 MHz on all active and passive components, and be capable of carrying at least 138 video programming services.
 3. The upgraded Cable System shall utilize hybrid fiber-coaxial (“HFC”) architecture that meets the following criteria upon completion of the System Upgrade. Further deployment of system technology over the life of the Franchise shall be at the Grantee’s discretion, provided that the resulting capacity, signal quality, and reliability of the Cable System shall equal or exceed those of the Cable System as described here.
 - (1) At no place in the Cable System shall more than 1,500 residences, businesses and other structures be served by any single fiber node. The average node size in the City shall not exceed 1,200.
 - (2) Each node shall be designed and constructed to provide for segmentation of homes passed without requiring substantial additional construction.
 - (3) There will be no more than eight amplifiers within any amplifier cascade in the Cable System. The average number of amplifiers in any amplifier cascade in the City shall not exceed six.
 4. Within six months after completion of the System Upgrade, the Grantee shall provide a continuous automated performance test and measurement system to ensure on an ongoing basis the technical and operational integrity of the Cable System.
 5. The Grantee shall use reasonable efforts to design and build the upgraded Cable System so that channel capacity may be readily expanded and additional programming delivered to Subscribers without compromising signal or service quality.
 6. The Grantee shall use reasonable efforts to design and build the upgraded Cable System so that further upgrades can be accomplished without substantially disturbing the Public Rights-of-Way, through replacement of electronics.
 7. The Grantee shall take reasonable steps to avoid implementing a system design that would preclude accommodation of multiple Internet Service Providers on any cable modem platform established by the Grantee.
 8. Grantee shall, throughout the Franchise Area and for the duration of the Franchise, make available on the System continuous information regarding visual and audio programming. Receiving such information shall not require subscription to any service other than basic and cable programming service tiers.
- C. Line Extension
1. Within the City, the Grantee must extend its Cable System upon request to provide service to any Person upon request, without charging such Person more than the standard installation rates, unless the Grantee demonstrates to the Franchise Agency’s satisfaction that the cost for such extension would require the Grantee to incur excessive costs, in which case the Franchise Agency may at its discretion grant a written waiver permitting the Grantee to recover from the Persons who will receive service those amounts that exceed a reasonable cost.
 2. For purposes of Section Seven.C.1, the length of a cable drop to a multiple dwelling unit shall be calculated to the point in the building where the risers begin and shall not include any part of the riser that must be traversed to reach an individual dwelling unit. It will be rebuttably presumed that any such drops are less than 125 feet in length.
 3. Where new dwelling units are developed in the City, including but not limited to in-fill housing and high-rise dwelling units in loft districts, the Grantee shall extend service to Persons in those units within 60 days after service is requested, provided that the owner of the building has granted access.
 4. The Grantee shall make the same Cable Service available to businesses or “commercial” Subscribers for their private use as to residential Subscribers, on the same terms and conditions as apply to such residential Subscribers.
- D. Public, Educational, and Governmental Access
1. **Municipal and School Services:** At no cost to the City or the School involved, the Grantee shall provide activated Cable Services and install one service outlet to each building within the Franchise Area used for public libraries, City operations, or K-12 Schools.
 - (1) In order for such facilities to access PEG channel and other pertinent governmental or educational programming, Grantee shall provide free of charge to all outlets in those facilities:
 - (a) Basic and Expanded Basic Service (or the subsequent equivalent thereto); and
 - (b) any equipment necessary to receive such services, including converters to de-scramble the Government Municipal Services (training) channel at City offices and facilities.

- (2) Grantee shall install the initial outlet at no charge in the building location specified. Grantee shall install additional outlets to such facilities upon request, and shall charge only its time and materials costs for installation of such additional outlets. Any outlets and wiring installed by the facility itself rather than the Grantee must also meet FCC technical standards. Any outlets and wires also used for internal facility transmission of non-cable services may not cause disruption to the Cable System and must be used only for lawful purposes. Grantee may decline service to outlets not meeting these standards.
- (3) With respect to any newly deployed eligible municipal and educational facilities not receiving service as of the Franchise Effective Date, the Agency will notify the Grantee with pertinent installation information and addresses for facilities in which new installations need to be made. Whenever possible, the Agency will also supply routing drawings, outlet locations, preferred installation schedules, and contact names. However, the Agency's failure to provide such information does not abrogate the Grantee's responsibility to meet the deadlines set herein, nor must an Agency inspector be on site for an installation to occur.
 - (a) Such new installations within an area currently served by the Cable System shall be made within thirty (30) days of written notification by the Agency, or later if the facility so designates.
 - (b) If the eligible facility is in an area not currently served by the Cable System, internal wiring for requested outlet(s) shall generally be made concurrent with plant deployment so that service can be initiated promptly upon activation of plant. In no event shall activation of service be delayed beyond six months from the initial request or within thirty days of plant construction and activation, whichever is later.

Grantee may seek an Agency temporary waiver of the deadline requirements of this Section Seven.D.1(3) due to technical or budgetary limitations on the part of the Grantee or facility.

- (4) Grantee shall deliver all cable signals to each outlet at a signal strength sufficient to meet FCC technical standards, and provide or reinstall wiring adequate to deliver such signal strength at locations which have more than one outlet, and adequate drop or feeder cable to allow for installation and service at additional outlets. Grantee shall work with the Agency during pre-construction periods to determine which sites need upgraded drops and develop a time frame for deployment of the upgraded drops. Requisite signal strength for multiple outlet facilities shall generally be 15dBmV or better, measured at the demarcation point of the facility.
- (5) Grantee is not required by this Section to provide free outlets, equipment or services to City-owned facilities leased to third parties for commercial purposes in which the Grantee would normally enter into commercial service contract with the facility occupant.
- (6) Grantee has established a voluntary initiative to provide cable Internet service to all public libraries, K-12 public and state-accredited parochial and Private Schools which are passed by the Cable System at no cost to the City or institutions. Grantee intends to provide each of these Schools and libraries with one outlet of unlimited Internet access, including the necessary modem, once the Cable System is upgraded to support such services. Provision of such services shall not be deemed a requirement of this Franchise for rate regulation purposes.
- (7) For purposes of this Section Seven.D.1 a building used for city operations is a City-owned or -leased building or facility which is regularly occupied by City employees in the performance of their duties, but in any event shall also include all public safety dispatch centers, police stations and fire stations regardless of the extent to which they are so occupied.

2. Access Channels. The Grantee shall make available to all Subscribers on the Cable System Access channels as follows:

- (1) Public Access channels: At least one specially designated, noncommercial Public Access channel and one specially designated, noncommercial Community Access channel.
- (2) Local Government Access channels: At least two specially designated channels available for local government use under the direction of the Franchise Agency. In addition, the three channels dedicated to two-way digital communication pursuant to the Prior Franchises shall be maintained in service pursuant to the requirements of the Prior Franchises until all applications using those channels have been moved to an institutional network.
- (3) Elementary and Secondary Education Access channel: At least one specifically designated channel for use by local educational authorities at the elementary and secondary levels.
- (4) University and College Access channel: At least one specially designated channel for use by the local (St. Louis or St. Louis County) universities and colleges, whether public or private institutions, or by an educational management entity or consortium generally representing these institutions.
- (5) Digital Capacity: If the Grantee implements technology that allows any of the above Access channels to be delivered using less than 6 MHz of bandwidth, then the Grantee shall make available additional capacity for the same purposes as are applicable to such Access channels pursuant to this Agreement, up to a maximum total of 6 MHz of bandwidth for each such Access channel, in the event that the capacity otherwise available is fully utilized for PEG access

purposes.

- (a) For purposes of this Section Seven.D.2(5), a video channel (or portion of such channel used to transmit video programming) shall be deemed "fully utilized" if cablecasts of non-duplicated, locally-produced programming exceed seventy-five percent (75%) (for public access) or fifty percent (50%) (for educational and governmental access) of the total time between the hours of 9:00 AM and midnight for at least thirty days in a period of forty-five consecutive days.
- (b) Such additional capacity shall be provided by the Grantee within ninety (90) days after a written request from the manager of such Access channel specifying the intended uses of such capacity.

3. **PEG Access and Remote Origination Sites.** Signal input points and equipment shall be available at sites specified in attached Exhibit 5 for live programming origination on Access Channels.

4. **Digital Conversion.** If the Grantee makes changes to the Cable System that require improvements to access facilities and equipment (such as conversion to an all-digital format), the Grantee shall cover any necessary modification or replacement costs so that PEG facilities and equipment may be used as intended with respect to the PEG channels specified herein.

5. **Public Access Channel Manager.**

- (1) Public and Community Access channels shall initially be managed by Double Helix Corporation (the "Access Channel Manager").
- (2) Public and Community Access facilities shall be open and scheduled by the Access Channel Manager in a manner that ensures availability of equipment and facilities during day, evening, and weekend hours.
 - (3) Training, workshops and internships in video production shall be offered to all City residents on a first-come, first-served basis, at minimal or no cost.
 - (4) Fees and deposits for use of such facilities or equipment shall be reasonable.
 - (5) If the City finds unsatisfactory the performance of an Access Channel Manager, then the City may, in its sole discretion, designate one or more non-profit, tax-exempt Access Channel Manager(s) meeting the requirements of Section Seven.D.5(6) and reassign any facilities or equipment provided by the Grantee to the new Access Channel Manager(s).
 - (6) An Access Channel Manager shall have demonstrated experience in facilitating community programming.

6. **Regulation of Public Access Channels.** The City may, from time to time, by ordinance, regulate use of public access channels.

E. **Emergency Alert System**

- 1. Grantee shall design and construct the system to provide for an interrupt of all video channels, and an audio override of all audio channels whereby a designee of the City may introduce an audio message on all of the system's channels simultaneously, during emergencies or disasters. An emergency power source to preserve this function shall also be provided by the Grantee at the headend of its system. The emergency alert system shall comply with all applicable federal requirements.
- 2. The emergency alert system shall provide for activation from the Office of the Mayor, police headquarters, fire headquarters, or the City Emergency Management Agency, via secure coded access. Methods and access codes for activating the emergency alert system shall be filed and kept current with the City Emergency Management Agency director, the Mayor, the Chief of Police, and the Chief of the Fire Department, and also for informational purposes with the Franchise Agency.

F. The City shall have the right, throughout the term of the Franchise, to install and maintain free of charge upon the poles and conduits of the Grantee any fixtures necessary for communications use by the City, on the conditions that (a) such fixtures do not interfere with the Cable System operations of the Grantee; and (b) the City will not use the Grantee's equipment for commercial purposes or to compete with the Cable System, or allow others to use such equipment for commercial purposes or to compete with the Cable System without acceptable reasonable compensation to the Grantee; and (c) to the extent permitted by law, the City shall indemnify the Grantee from damages resulting from any such use.

SECTION EIGHT. Interconnection.

A. Grantee will interconnect channels with the Grantee's other systems in St. Louis County for the purpose of allowing the two-way sharing of PEG Access programming upon the directive of the Franchise Agency. Interconnection of systems may be done by direct cable connection, microwave link, satellite, or other appropriate method that allows PEG Access programming to be shared and transferred between City and County systems.

B. Grantee may be granted a reasonable extension of time to make the interconnection provided for in the preceding subsection, or the Franchise Agency may rescind any order to interconnect upon request by the Grantee.

C. The Grantee shall insure the adequate signal quality of any interconnection.

SECTION NINE. Support of Minorities and Women.

Recognizing the economic benefits it is deriving from its use of the Public Rights-of-Way and the racial, ethnic and socio-economic diversity of the population of the City:

A. Grantee agrees that it shall, on an annual basis:

1. Award technical, professional services and construction contracts with a dollar value equal to at least 40% of the total dollar value of all such contracts to Minority Business Enterprises (MBE) as hereinafter defined and 10% to Women Business Enterprises (WBE) as hereinafter defined.
2. Purchase materials, supplies, and other goods or services of a dollar value equal to at least 30% of the total value of all such purchases from MBEs and 5% of all such purchases from WBEs.

For purposes of this Section, enterprises shall be eligible for MBE or WBE status if (i) they appear on eligibility lists maintained by a City department, division, or office with responsibility for establishing such eligibility, or (ii) the enterprise demonstrates to Grantee's and Agency's satisfaction that the enterprise is an MBE or WBE for purposes of Mayor's Executive Order number 28 with respect to MBE and WBE participation in City contracts. Grantee agrees that expenditure categories under this Section shall generally be determined as provided in Exhibit 6 to this Agreement, and may be modified by mutual agreement of Grantee and the Franchise Agency during the term of this Agreement to address new expenditure categories or business situations of the Grantee.

B. Grantee agrees that, on an annual basis, hiring practices for and composition of its employed work force shall be at least:

1. Technical and professional service employees: 40% Minority Groups, 10% Women
2. Construction employees: 45% Minority Groups, 5% Women
3. Management-level employees: 40% Minority Groups, 30% Women

C. Grantee agrees that any advertised job openings shall be posted with the Missouri Division of Employment Security, and advertised in publications aimed at minority and women audiences.

D. The City and Grantee agree that to respond to industry and technology advances Grantee's internal training will need to evolve and develop over the life of the Franchise. Grantee's workforce shall receive significant annual training in entry-level and on-going job skills development leading to promotional opportunities for qualified members of its workforce, including minorities and women, as follows:

1. Customer Service Representative Programs: shall take place no less than two times per year for all employees in the category, and encompass specific training in customer satisfaction standards, telephone relations, technical troubleshooting over the phone, complaint resolution, sales techniques which meet consumer protection and privacy obligations, and proper marketing procedures.
2. Management/Supervisor Programs: shall take place no less than two times per year and be structured as on-the-job training and cross-training which provides opportunities for job skill development. Such training courses shall include, but not be limited to: legal seminars, accounting and audit procedures, employee relations and supervisory practices, implementation of Equal Employment Opportunity (EEO) policies, customer relations, and safety practices.
3. Technical Programs: will be conducted for both installation and repair personnel, and should include or be based on the course work developed by the National Cable Television Institute, including testing and certification of technical personnel. On-the-job training in the field will include quality control and standards for installation to meet local electrical codes.

The Grantee's internal employee training specified in Section Nine.D.1 and Section Nine.D.2 shall generally be conducted in Grantee's facilities in the City of St. Louis, currently 5240 Oakland Avenue.

Grantee agrees that its local origination video programming and other operations will provide opportunities for internships open to qualified students and others as appropriate.

E. To ensure compliance with this Section, Grantee shall contract with a non-governmental entity (hereinafter referred to as the "Monitor") for assistance in establishing and implementing a plan for compliance with this section. Such contract shall provide for consultation between Grantee and Monitor regarding recruiting and hiring of employees, awarding of contracts, and independent verification of all quarterly reports submitted to the Franchise Agency by the Grantee.

F. Within 60 days of the end of each quarter, the Monitor, on behalf of the Grantee, shall file quarterly reports documenting

compliance with this Section. The format, content and methodology of such reports shall be subject to Agency approval. The quarterly reports shall be annotated to explain unusual conditions or circumstances reflected in the figures, and be accompanied by a verification statement of the Monitor. Such reports shall address:

1. Information by category regarding contracts and purchases with MBEs and WBEs.
2. Upon request of the City, subject to appropriate measures as to confidentiality, total dollars expended in each category and total dollars expended with MBEs and WBEs.
3. Percentage of employees within the specified categories of Section Nine.B.1, Section Nine.B.2, and Section Nine.B.3, indicating percentages by both gender and racial composition.
4. Training information including:
 - (1) Descriptive summary of the title and content of internal Customer Service Representative and supervisor employee training programs during the previous quarter, also specifying the classifications of employees receiving such training, reasons why any employee in those classifications did not receive such training, and aggregate information as to gender and racial composition of training participants.
 - (2) Descriptive summary of the title and content of internal or third-party courses of training for employees in the technical category during the previous quarter, also specifying the classifications of employees receiving such training, reasons why any employee in those classifications did not receive such training, and aggregate information as to gender and racial composition of training participants.
 - (3) Descriptive summary of title and content of all training offered to management personnel and potential applicants for management promotions, also specifying criteria for selection of training participants, and including job titles and general classification of supervisory or management employees receiving such training, reasons why any management employee or applicant did not receive such training, and aggregate information as to gender and racial composition of such training participants.
5. Description of, and information on participation by gender and racial composition, for non-employee internships offered or funded by the Grantee during the previous quarter, as applicable.

G. Grantee agrees that based upon such reports, the Franchise Agency shall make determinations of compliance for contract awards, employment and training efforts throughout the life of the franchise, and that Grantee is obligated to address any written Agency notice of under-compliance or non-compliance by filing a specific remedial plan to achieve full compliance within the next quarter in regards to contract awards, employment of minorities and women, and within the next two quarters in regards to training. Such remedial plans shall include written policies regarding hiring and training and submission of interim reports during the remedial period as appropriate to the situation, and shall comply with any Agency requirements for report methodologies to verify compliance.

H. Copies of all reports and filings filed with the FCC in regard to FCC regulations relating to employment practices shall be submitted to the Franchise Agency on an annual basis.

SECTION TEN. Payments to the City.

The Grantee shall pay franchise fees to the City pursuant to Section Eight of the Cable Ordinance.

SECTION ELEVEN. Performance bond, letter of credit, and insurance.

A. With its acceptance of the Franchise, the Grantee shall file with the Franchise Agency an executed bond in a form and with a surety acceptable to the City as specified in this Agreement to indemnify the City against any loss or damage it may suffer in the event the Grantee fails to comply with one or more of the provisions of its Franchise, in the following amount: \$1 million. Upon written application by the Grantee, the Franchise Agency shall permit the amount of the bond to be reduced in an amount determined by the Agency in writing in the Agency's sole discretion to reflect the percentage of completion of the Grantee's System Upgrade. In no event shall the amount of the bond be reduced below \$500,000. Said bond shall be obtained at the sole expense of the Grantee and remain in effect for the full term of the Franchise or any extension (as distinct from renewal) thereof plus an additional six months thereafter (unless a replacement bond covering that period is agreed to by the City). The Grantee and its surety 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 Grantee's failure to comply with one or more of the provisions of its Franchise, including a reasonable allowance for the City's lawful attorneys' fees and costs, up to the full amount of the bond.

B. Neither the filing of a performance bond with the Agency, nor any insurance coverage, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages, either to the full amount of the bond or otherwise.

C. The Grantee shall file and maintain with the Franchise Agency at all times during the term of the Franchise an irrevocable direct pay letter of credit from a financial institution licensed to do business in Missouri in the amount of \$50,000 to ensure the Grantee's faithful performance of its obligations under the Franchise. The form and content of the letter of credit shall be approved

by the Franchise Agency and the Comptroller.

1. The letter of credit shall be released only upon expiration of the Franchise or upon the replacement of the letter of credit prior to its expiration.

D. The following procedures shall apply to drawing on the performance bond and the letter of credit required under this Section Eleven, either of which is referred to below as the "Security Fund".

1. If the Grantee fails to make timely payment of any amount due under this Agreement or applicable law or ordinances, after reasonable notice by the City and a reasonable opportunity for the Grantee to make the required payment and to be heard regarding any issues concerning such payment, the Franchise Agency may withdraw the amount thereof, with interest and any penalties, from the Security Fund pursuant to the procedures specified in this Section Eleven.D.
2. Within three (3) days of a withdrawal from the Security Fund, the Franchise Agency shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Grantee.
3. If at the time of a withdrawal from the Security Fund by the Franchise Agency, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Grantee to the City until it is paid.
4. No later than twenty (20) days after mailing of notification to the Grantee by certified mail, return receipt requested, of a withdrawal under the Security Fund, the Grantee shall restore the Security Fund to the total amount specified herein.
5. Upon termination of the Franchise, the balance then remaining in the Security Fund shall be returned to the Grantee within six months of such termination, provided that there is then no outstanding default on the part of the Grantee.
6. At no time shall the City seek a withdrawal from both the performance bond and the letter of credit for recovery of the same obligation, unless withdrawal from both becomes necessary to meet the amount of such obligation.

E. The Grantee will comply with all indemnity and insurance requirements in the Cable Ordinance.

SECTION TWELVE. Revocation and default provisions and remedies.

A. In addition to all other rights and powers reserved by the City, the City reserves the right to terminate and cancel a Grantee's Franchise and all rights and privileges of the Grantee thereunder pursuant to the termination provisions of the Cable Ordinance.

B. Upon violation of this Agreement or applicable law or ordinances by the Grantee, the City may proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity, including an action for specific performance of any provision of this Agreement and suit for the appointment of a receiver. Such remedies shall be cumulative, except that the City may not obtain both actual and liquidated damages for the same violation.

C. The following events are hereby defined as and declared to be and shall constitute violations of this Agreement so as to trigger the City's enforcement processes and the Grantee's due process rights ("Violations"):

1. Failure by the Grantee to make timely payment of any Franchise Fee payment as provided herein which is not remedied by making such payment, together with interest and penalties as provided herein, within ten days after a written notice from the City to the Grantee identifying such failure;
2. Failure by the Grantee to provide, file or maintain, as and when required by this Agreement, any bond, policy of insurance, certificate of insurance or letter of credit, which is not remedied within five business days after a written notice from the City to the Grantee identifying such failure;
3. Failure by the Grantee to comply with any other agreement, obligation, duty, covenant or provision of this Agreement; provided that, if such failure is curable, the City shall notify the Grantee of the failure in a written notice, and if such failure shall continue beyond a reasonable cure period as stated in such notice, the failure shall be a Violation; provided that, if such curable failure is such that it cannot be cured within such period, it shall not constitute a Violation provided (i) that the Grantee has commenced such cure within such period, and (ii) the Grantee diligently prosecutes such cure to completion.
4. Failure by the Grantee to comply with any agreement, obligation, duty, covenant or provision of this Agreement, which failure is part of a pattern of repeated failure by the Grantee after written notice to comply with such agreement, obligation, duty, covenant or provision.

D. Grantee acknowledges that a Violation of this Agreement is also a violation of the Cable Ordinance.

E. Because the Grantee's failure to comply with provisions of the Franchise and this Franchise Agreement will result in injury to the City, and because it will be difficult with respect to certain provisions to estimate the extent of such injury, the City and the Grantee agree to the following liquidated damages for the following Violations of the Franchise and of this Agreement, which

represent both parties' best estimate of the damages resulting from the specified Violation. The parties agree that the liquidated damage amounts are in calendar 2001 dollars and shall be increased each year by the increase in the U.S. City Average of the Consumer Price Index.

1. For failure to comply with the requirements hereunder with respect to the approval of franchise transfers: \$1,000/day for each Violation for each day the Violation continues;
2. For failure to comply with requirements for the provision of public, educational, and governmental capacity on the Cable System: \$500/day for each Violation for each day the Violation continues;
3. For failure to complete the System Upgrade by the deadlines set forth in the Franchise Agreement: \$1,000/day for each Violation for each day the Violation continues.

F. To initiate the enforcement process for liquidated damages, the City shall pursue the same process described in the Cable Ordinance for imposition of fines, except that if it pursues relief in court, the City may pursue appropriate proceedings in any court of competent jurisdiction rather than in City Court.

G. If a Grantee is fined for a violation of the Cable Ordinance, such Grantee shall not be subject to liquidated damages pursuant to this Agreement for the same violation or act. If a Grantee is subject to liquidated damages pursuant to this Agreement for a Violation, it shall not be fined for a violation of the Cable Ordinance for the same violation or act.

H. No delay or omission by the City to exercise any right or power occurring upon any default or violation shall impair any such right or power or shall be construed to be a waiver of any such default or violation or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

I. No waiver of any default or event of default hereunder by the City shall extend to or affect any subsequent default or event of default or impair any rights or remedies consequent thereon.

SECTION THIRTEEN. Reports and records.

A. The Franchise Agency shall have the right to inspect and, subject to Section Thirteen.B, copy at any time during normal business hours at the City Cable System office or at such location as the Franchise Agency may reasonably designate, all records that the Franchise Agency deems reasonably appropriate in order to monitor compliance with the terms of the Cable Ordinance, this Agreement, or applicable law. This includes not only the records of the Grantee, but any records the Franchise Agency reasonably deems relevant but which may be held by an Affiliate, a cable operator of the Cable System, or any contractor, subcontractor or any person holding any form of management contract for the Cable System. The Grantee is responsible for collecting the information and producing it at the location specified above, and by accepting its Franchise it affirms that it can and will do so.

B. Access to inspect the Grantee's records pursuant to Section Thirteen.A shall not be denied by the Grantee on the basis that said records contain confidential personnel or trade secret information. However, copying such records shall be permitted only to the extent the City can and agrees to lawfully protect such information from further disclosure, or to the extent the City is otherwise specifically authorized by applicable law to obtain copies of such records or information. All confidential personnel or trade secret information received by the Franchise Agency shall remain confidential and protected, but only to the extent permitted by Chapter 610, Revised Statutes of Missouri, as amended, and other applicable state and federal law.

C. The Grantee shall maintain its financial records so as to allow analysis and review of its System operations in the Franchise Area.

D. Copies of all petitions, applications, communications and reports submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction, in respect to any matters regarding Cable System operations under the Franchise, shall be provided to Agency no later than the filing date for such petitions, applications, communications and reports. Copies of all communications of any kind received by the Grantee from such commissions or agencies regarding Cable System operations under the Franchise shall be filed with the Agency as soon as reasonably possible upon receipt. Confidential personnel, trade secret, or otherwise nonpublic information in such communications may be redacted and treated consistent with the procedures set forth in Section 7(B)(3)(a)-(b) of the Cable Ordinance.

E. Annual Report. Unless this requirement is waived in whole or in part by the Franchise Agency, no later than 90 days after the end of its fiscal year, the Grantee shall submit a written report to the Franchise Agency, in a form directed by the Franchise Agency, which shall include:

1. a summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by the Grantee, together with copies of any written complaints received. Where complaints involve recurrent Cable System problems, the nature of each problem and the corrective measures taken shall be identified;
2. a report showing the number of service calls received by type during each quarter, and the percentage of each type of service call as a percentage of the Subscriber base;
3. a report showing the number of Outages (as that term is defined in the Customer Service Ordinance) for each quarter,

and identifying separately each planned Outage, the time it occurred, its duration, and the estimated area and number of Subscribers affected; each unplanned Outage, the time it occurred, its estimated duration and the estimated area and the number of Subscribers affected; and the total hours of Outages as a percentage of total hours of Cable System operation;

4. a report showing the number of Service Interruptions (as that term is defined in the customer service ordinance) for each quarter, and identifying separately each Service Interruption, the time it occurred, its estimated duration and the estimated area and the number of Subscribers affected; and the total hours of Service Interruptions as a percentage of total hours of Cable System operation;
 5. an annual financial report for the previous fiscal year, certified by the Grantee's chief financial officer or an independent certified public accountant, including an income statement showing all Subscriber revenue from each category of service, and all revenue from every source of non-Subscriber revenue, derived from the operation of the Cable System;
 6. an organizational chart showing all corporations or partnerships with more than a five (5) percent ownership interest in the Grantee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified and so on until the ultimate corporate and partnership interests are identified;
 7. a summary of the results of, and/or, at the Grantee's option, copies of the System's technical tests and measurements performed during the past year;
 8. a detailed copy of updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the City, and including changes in all such items for the period covered by the report;
 9. a full schedule of all Subscriber and other user rates, fees and charges;
 10. the Grantee's policies regarding Subscriber privacy;
 11. such other information the Franchise Agency deems reasonably appropriate in order to monitor compliance with the terms of the Cable Ordinance, this Agreement, or applicable law as the Franchise Agency may direct.
- F. Special Reports: Unless this requirement is waived in whole or in part by the Franchise Agency, the Grantee shall deliver the following special reports to the Franchise Agency:
1. The Grantee must submit a copy and full explanation of any notice of deficiency, forfeiture, or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding regarding the Cable System, the Grantee, or any Affiliate of the Grantee, to the extent the same may affect or bear on operations in the City. By way of illustration and not limitation, a notice that an Affiliate that has a management contract for the Cable System was charged with improper accounting practices regarding its management contracts would be deemed to affect or bear on operations in the City. This material shall be submitted in accordance with the deadlines specified in Section Thirteen.D herein.
 2. The Grantee must submit a copy and brief explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee or by any partnership or corporation that owns or controls the Grantee directly or indirectly.
- G. Additional Reports. Upon reasonable notice, the Grantee shall prepare and furnish to the Franchise Agency such additional reports as the Franchise Agency deems reasonably appropriate in order to determine compliance with the terms of the Cable Ordinance, this Agreement, or applicable law.
- H. In reports or records submitted to the City pursuant to this Section Thirteen, confidential personnel or trade secret information may be redacted pursuant to Section Thirteen.B to the extent permitted by applicable law.
- I. Records Required
1. The Grantee shall at all times maintain:
 - (1) Records of (a) all written complaints received for the life of the franchise, and (b) all oral complaints received to the extent and in the form that such complaints are recorded by the Grantee in the ordinary course of business, for five years. The term "Acomplaints" as used herein refers to complaints about any aspect of the Cable System or the Grantee's operations, including, without limitation, complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call.
 - (2) A full and complete set of plans, records, and "as built" (as that term is normally used in the cable industry) maps showing the location of Cable System equipment installed or in use in the City, exclusive of Subscriber service drops.

- (3) A comprehensive record of all utilization of contractors, subcontractors, vendors, and suppliers necessary to demonstrate compliance with Grantee's obligations under Section Nine of this Agreement.
- (4) A public file showing its timetable for completion of the System Upgrade.

J. **Voluminous Materials:** If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then the Grantee may request that the inspection take place at some other location, provided that (1) the Grantee must make necessary arrangements for copying documents selected by the Franchise Agency after review; and (2) the Grantee must pay all travel and additional copying expenses incurred by the Franchise Agency in inspecting those documents or having those documents inspected by its designee.

K. **Retention of Records; Relation to Privacy Rights.** The Grantee shall take all reasonable steps that may be required to ensure that it is able to provide the Franchise Agency all information which must be provided or may be requested under the Cable Ordinance, this Agreement, or other applicable law, including without limitation reasonable steps enabling Subscribers to exercise their options regarding release of their information. Nothing in this Section Thirteen shall be read to require the Grantee to violate 47 U.S.C. § 551 or other applicable privacy laws. Records shall be kept for at least five (5) years.

L. **Waiver of Reporting Requirements.** The Franchise Agency may, at its discretion, waive in writing any particular report or record-keeping requirement of this Section Thirteen.

SECTION FOURTEEN. City's right of intervention.

The Grantee agrees not to oppose intervention by the City in any suit or proceeding to which such Grantee is a party relating to the Franchise or to the City.

SECTION FIFTEEN. Amendment of Franchise.

Any amendment of the Franchise Agreement shall be subject to acceptance by the Grantee, except that nothing herein shall be construed to limit the lawful exercise of the City's police power, authority lawfully to levy any nondiscriminatory taxes on any activity conducted by Grantee, or other lawful authority, whether exercised by ordinance or otherwise. Nothing herein, however, shall affect the City's or the Grantee's rights with respect to renewal of the Grantee's Franchise. Nothing contained in this Franchise shall be deemed to prohibit in any way the right of the City lawfully to levy any nondiscriminatory taxes on any activity conducted by Grantee.

SECTION SIXTEEN. Acceptance.

The Grantee shall file an acceptance of its Franchise pursuant to the Cable Ordinance. The Grantee's Franchise shall not be effective unless in its acceptance such Grantee:

- A. Tenders to the Agency in form acceptable to the City, all of the following:
 - 1. An unconditional acceptance of its Franchise;
 - 2. All certificates of insurance required by the Cable Ordinance;
 - 3. The bond as required by Section Eleven.A hereof;
 - 4. The letter of credit required by Section Eleven.C hereof;
 - 5. An executed copy of the Settlement Agreement authorized by Ordinance ____ (BB 78) ("Settlement Agreement").

SECTION SEVENTEEN. Grantee may promulgate rules.

A. Grantee may promulgate such rules, regulations, terms and conditions of their businesses as are reasonably necessary to enable Grantee to exercise its rights and perform its services under this Agreement and the applicable rules of the FCC, and to assure uninterrupted service to all Subscribers. Such rules and regulations are at all times subject to the provisions of this Agreement, the Cable Ordinance, the City Charter, and other applicable law. Such rules must comply with those provisions and shall not be deemed to have the force of law.

B. Grantee shall not, as to rates, charges, service, services, facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to any prejudice or disadvantage.

SECTION EIGHTEEN. Notices.

Every direction, notice, or order to be served upon Grantee shall be sent to:

General Manager
AT&T Broadband

5240 Oakland Avenue
St. Louis, MO 63110

with a copy to:

Franchise Director
AT&T Broadband
5240 Oakland Avenue
St. Louis, MO 63110

Every notice to be served upon the City shall be delivered or sent by certified mail with return receipt requested to:

President of the Board of Aldermen
City of St. Louis
Room 232, City Hall
Tucker and Market Streets
St. Louis, Missouri, 63103

and to:

Communications Commissioner
4971 Oakland
St. Louis, Mo. 63110

with copies to:

Chairman, Public Utilities Committee
Board of Aldermen
Room 230, City Hall
Tucker and Market Streets
St. Louis, Missouri, 63103
Office of the Register of the City of St. Louis
Room 118, City Hall
Tucker and Market Streets
St. Louis, Missouri, 63103

City Counselor
Room 314, City Hall
Tucker and Market Streets
St. Louis, Missouri, 63103

Either party may change its notice locations by prior notice in writing to the other party clearly indicating that the new address shall replace the old for notices pursuant to this Section. The service of any such notice shall be deemed to have been at the time of receipt.

SECTION NINETEEN. Construction of provisions generally.

This Agreement shall be construed under the law of Missouri.

SECTION TWENTY. Severability.

If any provision of this Agreement or the particular application thereof, is held invalid by any Court, administrative agency, or other body with appropriate jurisdiction, the remaining provisions, and their application, shall not be affected thereby. If the terms of this Agreement are materially altered due to changes in governing law, then the parties shall negotiate in good faith to reconstitute this Agreement consistent with then-applicable law in a form that, to the maximum extent possible, is consistent with the original intent of Grantee and the City and preserves the benefits bargained for by each party.

SECTION TWENTY-ONE. Obscenity provisions.

Ordinance 58539 of the City (Sections 15.32.050 to 15.32.110 Rev. Code St. L. Anno. 1990) is hereby incorporated in this Agreement by express reference.

SECTION TWENTY-TWO. Conflict of provisions.

If any provision of this Agreement expressly waives or contradicts any provision of the Cable Ordinance or the customer service ordinance as adopted concurrently with this Agreement, the provisions of the Agreement shall control.

SECTION TWENTY-THREE. Force Majeure

The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement

or penalty relating to noncompliance or default, where such noncompliance or alleged defaults were caused by extraordinary circumstances reasonably beyond the ability of the Grantee to control. This provision includes, but is not limited to, work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, provided, however, that the Grantee shall use its best efforts to prevent such work delays regarding utility poles.

SECTION TWENTY-FOUR. Integration

This Franchise Agreement, together with its Exhibits and with the Settlement Agreement entered into concurrently by the Grantee and the City, constitutes the entire agreement between the Grantee and the City.

CITY OF ST. LOUIS, MISSOURI,
a municipal corporation of Missouri

By: _____
Larry D. Stone
Communications Commissioner

By: _____
Darlene Green
Comptroller

APPROVED AS TO FORM:

City Counselor

DATE FILED WITH REGISTER:

City Register

ST. LOUIS TELE-COMMUNICATIONS,
INC.
By: _____
[name & title of signatory]

ATTEST:

[Corporate secretary or other appropriate person]

EXHIBIT 1

DESCRIPTION OF DOWNTOWN AREA

See Section One.A.4

Commencing at the intersection of Jefferson Avenue and Carr Street, thence eastwardly on Carr Street to its intersection on Lewis Street, thence southwardly on Lewis Street, which shall change into Leonor K. Sullivan Street to its intersection on Chouteau Avenue, thence westwardly on Chouteau Avenue to its intersection on Jefferson Avenue, thence northwardly on Jefferson Avenue to the point of origin.

See attached **EXHIBIT 2** (WASHINGTON AVENUE AND CUPPLES STATION BUILD-OUT)

See Section Five.A.3

EXHIBIT 3

PREVENTIVE MAINTENANCE AND PROBLEM RESOLUTION PLAN

See Section Five.E

GOAL:

In an effort to provide quality service to its Subscribers in the City of St. Louis during the system upgrade, Grantee has recently formed a dedicated Preventive Maintenance (PM) Team. This team's objective is to ensure that the Grantee's existing plant will meet the technical standards, established by the FCC, as well as the Grantee's own standards for quality and reliability.

SCOPE:

The PM Team has developed a systematic preventive maintenance plan to:

Inspect and test power supplies;
 Monitor headend efficiency and signal quality;
 Find and address signal leakage problems;
 Monitor for outages;
 Regularly sweep the Cable System to ensure adequate signal strength;
 Repair work order referrals in a timely manner; and,
 Address height clearance issues.

RESOURCES:

Six (6) System Technicians and six (6) Advanced Technicians assigned full-time to this team under Normal Operating Conditions.

Five (5) Quality Control Technicians.

A Technical Supervisor assigned full time to the PM Team to oversee its planning and operation.

Fully equipped bucket trucks including power inverters, for each member of the PM team.
 Adequate stock of parts necessary for PM Technicians to maintain/repair cable equipment.

- 1 Two (2) new spectrum analyzers with CATV options.
- 2 Three (3) new digital Quam meters for use to troubleshoot digital problems.
- 3 A new sweep system including one (1) transmitter and eleven (11) sweep receiver/SLM's.
- 4 Two (2) new metallic TDR's and a new optical OTDR (used to find faults in cables).
- 5 A new optical fusion splicer.
- 6 Three (3) new complete sets of fiber optic tools.
- 7 Three (3) new sets of power meters, light sources, live fiber ID's.
- 8 Sixty-eight (68) combined signal leakage/SLM meters so that each PM Technician, and QC Technician shall have this equipment (Additional equipment will be purchased in 2001 to cover the needs of all remaining members of the technical staff).

MAINTENANCE METHODOLOGY IMPROVING SYSTEM RELIABILITY AND SYSTEM QUALITY

Power Supplies

Purpose: A CATV power supply converts 110 volts (AC), supplied by the local electric company, into 60 volts (AC), which travels via the coaxial cable to system amplifiers. The AC voltage is then converted to DC voltage within the amplifier, and is used to power the electronic components in the amplifier.

Part of the power supply has a stand-by unit, which includes three (3) deep cycle batteries that are constantly charging. In the event of an electric company power failure, the DC voltage batteries are converted into 60 volts AC, which travels via the coaxial cable to the system amplifiers, and keeps the system running as the power failure is being corrected. Thus, it is in the best interest of the Grantee to proactively maintain the stand-by units and its batteries.

- Procedure:**
1. Maintenance of power supplies shall be done on a schedule, which assures that each power supply will be tested at least once per calendar quarter.
 2. All power supplies are located on a master list and designated in one of six management areas. Each area has a designated Advanced Technician and System Technician, who are responsible for testing each power supply.
 3. Should a power supply fail the test, the Technician shall use his or her best efforts to make all necessary repairs prior to moving forward onto the next power supply. In such cases where repairs

- require turning off the system, or interrupting service to Subscribers for more than 1-2 minutes, the Grantee shall make such repairs overnight during the hours designated for such repairs.
4. The Technical Supervisor in charge of the PM Team shall be responsible for the oversight of the Master Power Supply List and to ensure that the quarterly schedule within each management area is up to date.
 5. The power supply test shall be on file and may be reviewed by the City, upon request, at the Grantee's office during office hours.

Headend Efficiency and Signal Quality

Purpose: The CATV headend is the origination point for all signals that are placed on the fiber/coaxial cable to provide cable services to the Subscribers. It is essential that all signals leaving the headend be of the highest quality (free from noise and distortions).

The PM Team proactively ensures that all signals at the headend either meet or exceed both the Grantee's and the equipment manufacturer's specifications.

- Procedure:**
1. Every morning (Monday-Friday), an Advanced Technician performs an autotest at the headend test point. The test records video and audio levels, channel to channel separation, peak to valley, and hum modulation on all analog channels. Results of the autotest are electronically archived.
 2. The Advanced Technician will also visually check the picture quality and listen to the audio quality of all channels.
 3. Any autotest, picture, or audio problems are corrected before the Advanced Technician leaves the headend.
 4. The Advanced Technician shall review the City's LAN system and the sweep transmitter each day for functionality. If any site on the LAN system is not communicating, or there is a problem with the sweep transmitter, the Advanced Technician and any necessary supporting staff shall immediately work on the problem until completion.
 5. The Advanced Technician also performs a weekly spectrum analyzer test at the headend testpoint. The test records the video and audio carrier levels, video carrier level, aural carrier separation, channel to channel separation, peak to valley, and hum modulation on all channels. A Quam meter is used to check the quality of the digital channels. The results of the tests are recorded on the Weekly Headend Check Sheet and are archived in a binder. Should the test reveal a problem, the Advanced Technician shall make all appropriate corrections at that time.
 6. Each month, the Advanced Technician performs a separate spectrum analyzer test at the headend testpoint, a waveform monitor test at each modulator, and a Quam test of the digital signals. The spectrum analyzer test follows the same procedure as the weekly test, as does the Quam test. The waveform monitor test records the depth of modulation on each modulated channel. The results of the test are recorded on the Weekly Headend Check Sheet and are archived in a binder. Once again, if the test reveals any problems, the Advanced Technician shall make all necessary corrections at that time.

System Sweeps

Purpose: With the current system architecture, a minor problem at an early amplifier within an amplifier cascade, may escalate to a more significant picture problem at every amplifier location downstream from the initial problem point. To prevent this from occurring, the PM Team sweeps the trunk and distribution amplifiers to specifications to ensure quality signals, especially at the end of an amplifier cascade.

- Procedure:**
1. It is the Grantee's objective to sweep 100% of the trunk amplifiers and 50% of the distribution amplifiers on a yearly basis.
 2. Each trunk cascade will be assigned to a specific Advanced Technician who will be responsible for sweeping each of the amplifiers on the trunk line. The System Technicians within their assigned management areas will sweep the distribution amplifiers.
 3. Each Advanced/System Technician will reference his or her receiver at the launch amplifier at the headend. Once he or she stores the reference, the Technician proceeds to the first amplifier in his or her cascade that is scheduled for the day.
 4. At each amplifier, the Technician shall complete the Amplifier Data Sheet, which records the model type of each piece of equipment in the amplifier, data regarding the distribution legs, the input pad and equalizer, the condition of the shrink, the condition of the ground, and the AC and DC voltage.

5. The Technician next records the input RF levels with a sweep receiver. Using the manufacturer's equation, the Technician determines the proper pad and equalizer values for the amplifier. If the proper pad and equalizer are not installed, he or she corrects them by changing them.
6. The Technician then uses the manufacturer's specification chart to determine the correct trunk output levels for the current ambient temperature. The Technician then sets the trunk outputs to those levels, as well as sets the bridger levels.
7. The next step is to use the sweep receiver to adjust the response of the system to obtain maximum flatness. The specifications are determined by the cable system's current architecture. Once the specifications are met, the trunk and bridger output levels are checked again. The final response is recorded on the Amplifier Data Sheet.
8. The final test is the Automatic Gain Control (AGC) test. This test confirms that there is enough headroom and floor room for the AGC to properly compensate for the changes in attenuation of the cable, caused by the changes in the ambient temperature. Once the AGC test is complete, the AGC levels are set. The test results are recorded on the Amplifier Data Sheet. Upon completion of these procedures, the Technician moves to the next amplifier in the cascade and repeats the steps.
9. Should the Technician find a problem that prevents the completion of the sweep of that amplifier, he or she must troubleshoot and isolate the problem. If the repair involves the shut down of the system and interruption of service to Subscribers for more than 1-2 minutes, such work shall take place during the overnight maintenance hours designated for such work.
10. Once the problem has been corrected, the Technician will return to the amplifier and begin the sweep process again.
11. Charts showing the amount and percentage of amplifiers swept shall be on file and may be reviewed by the City, upon request, at the Grantee's office during office hours.

Outages

Purpose: The Grantee strives through its preventive maintenance practices to prevent outages from disrupting service to its Subscribers. While at times outages will occur, the Grantee has established a proactive response procedure to restore cable service, under Normal Operating Conditions, as quickly as possible.

- Procedures:**
1. The PM Team has the responsibility for repairing outages as they occur.
 2. Once an outage is detected, the dispatcher notifies the Advanced/System Technician within the appropriate management area. The dispatcher also notifies the PM Technical Supervisor of the outage, giving him or her information as to the size of the area affected.
 3. Based upon the information, the PM Supervisor determines what additional manpower, if any shall be sent to assist the responding Technician. During After Business Hours, this is the responsibility of the On-Call Supervisor. The PM/On-Call Supervisor utilizes the Grantee's escalation list for outages and other emergency type situations. The list includes those individuals to contact and when. The list also provides the selected individuals' home, office, cell, and pager numbers.
 4. The PM/On-Call Supervisor remains in contact with the Technician working on the outage, until the outage is restored.
 5. Following the restoration of the outage, the Technician completes an Outage Report, which details the cause and steps taken to restore the outage.
 6. Each Friday morning, the Technicians and the PM Supervisor have an outage review meeting. The purpose of the meeting is to review outages that have presented problems to Technicians. The steps taken to restore each outage are reviewed, with constructive criticism coming from both the Technical Supervisor and the Technician's peers.
 7. Based on these reports, it is the responsibility of the Technical Supervisor to monitor outage locations and causes, and to identify repeat locations.

Signal Leakage

Purpose: Signal leakage is the egress of RF signals from the CATV system into the air. Cable television systems operate on the same frequencies used by the FAA to communicate to commercial aviation. Since a CATV system is a closed system (signals are self-contained within the cable), there should be no interference with commercial aviation. But, signal leakage does occur, for which there are many causes. The FCC has mandated that cable operators keep signal leakage below the thresholds it has established.

- Procedures:**
1. The Grantee monitors 100% of its plant for signal leakage on a quarterly basis. Each PM team shall perform a 100% structured drive-out in their six respective management areas each quarter.
 2. Under Normal Operating Conditions, a System Technician will spend at least two (2) eight hour days per week riding the plant to find, log, and repair leaks.
 3. Prior to the drive-out, the System Technician reviews the assigned drive-out map identifying the starting and ending points of the drive-out. The System Technician then calibrates his or her leakage meter to the "test leak".
 4. Should a leak be detected at a point in the drive-out, the System Technician will use the leakage meter and a dipole antenna to locate the strongest point of the leak. The location and level are recorded on the Leakage Log. The System Technician then determines the cause of the leak and initiates appropriate repairs
 5. The System Technician shall take immediate corrective action if:
 - a. The source of the leak is outdoors and does not require the system to be turned off.
 - b. The source of the leak is outdoors and requires that the cable system be shut down to make the repair, but such repairs can be completed by the System Technician in 15 minutes or less and/or the repair will not affect the trunk cable.
 - c. The signal leakage is detected from inside a Subscriber's residence, and if the Subscriber is home, the interior leak will be identified and the repair will be made. If the Subscriber is not home, a CLI doortag shall be left on the door with a special phone number to the PM Supervisor, an explanation of the nature of the problem, and follow-up steps to be taken. If repairs within the Subscriber's residence are not possible, and the leak is excessive or dangerous, the Subscriber's service may either be padded at the tap to reduce the level of the leak to an acceptable range, or the service will be turned off at the tap.
 6. Following the corrective action above, the System Technician then re-measures levels at the strongest point of the original leak to assure that the leakage has been corrected and makes further repairs if necessary. The corrected level of the leak, if any, and cause is recorded on the Leakage Log.
 7. If the System Technician cannot repair immediate outdoor signal leakage problems, or the problem(s) cannot be corrected within the allocated timeframe for repairs, the signal leakage site shall be reported for further action.
 - a. The System Technician is responsible for reporting the problem and location that day, documented for further scheduling of repair.
 - b. The Grantee shall then make outdoor repairs overnight during the hours designated for such repairs.
 - c. Follow-up procedures for signal leakage within the Subscriber's residence will include:
 - i. An attempt by the Grantee via phone to contact the Subscriber within 24 hours to set up an appointment convenient for the customer.
 - ii. If the Subscriber has not contacted the Grantee within two (2) business days, the Grantee will again attempt to contact the Subscriber at the residence. If unsuccessful, the Grantee will send a first class letter to the Subscriber informing them of the signal leakage, and that their service may be turned off if they do not call the PM Technical Supervisor.
 - iii. If the Subscriber has not contacted the Grantee five (5) business days after the first class letter was sent, their service will be turned off.
 - iv. The Subscriber's service will be restored when they call the Grantee to schedule a repair appointment and the repair has been made.
 8. Once a drive-out for the day is complete, the System Technician notes the mileage on the trip odometer and logs it on the Leakage Log.
 9. In addition to the System Technicians, Advanced Technicians, Quality Control Technicians, Service Technicians, Construction Technicians, and Advanced Installers have leakage meters. The leakage meters are to remain on as they perform their normal designated duties. Should a leak be detected,

- they are required to contact Dispatch, who will log the leak and forward it to the PM Supervisor for appropriate action and repairs.
10. The Leakage Logs, drive-out maps, and the master maps regarding signal leakage are kept in the PM Supervisors office. Each quarter's reports, including maps, are kept in a technical file.
 11. The Grantee intends to purchase leakage meters in 2001 for the remainder of its technical staff that currently do not have a leakage meter.
 12. The Grantee will perform an annual flyover, which is conducted by an independent third party, to insure that the Grantee meets the FCC threshold of 90%. Copies of the CLI flyover maps, test results and reports are kept at the system offices in accordance with FCC requirements.
 13. All reports, maps, logs, and documents may be reviewed by the City, upon request, at the Grantee's office during office hours.

Note: In addition to these preventive maintenance steps, the City will forward to the Grantee, locations the City has identified as having signal leakage. The Grantee will take corrective action and report back to the Franchise Agency on the original City leakage log sheets within 14 business days of the referral.

Clearance Problems

- Procedures:**
1. It is the responsibility of each employee to log on the Damage Plant form any potential clearance problem, hardware problem, or any other problem that requires corrective action that they encounter while performing their normal duties. If the problem is at the residence where they are working, they are required to correct the problem.
 2. The Construction Supervisor is responsible to review the Damage Plant forms and determine what type of corrective action is needed. Construction related corrective actions are scheduled by the Construction Supervisor.
 3. The Quality Control ("QC") Supervisor receives all non-construction related clearance problems.
 - a. The Grantee's QC Team reviews each reported site for low hanging/refuse problem drops. Any drop not meeting height specifications is immediately corrected by a Quality Control Technician and filed as part of his inspection report.
 - b. The Installer or Service Technician who performed the initial work receives a Quality Control Critique as to why the height specification and drop were not properly met, and what steps were taken by the QC Technician to correct the situation.
 4. With respect to cable lines and support strand in the Public Right Of Ways:
 - a. The Construction Technicians are instructed that during pole changes and other upgrade construction, they are required to check and correct height problems on the pole(s) throughout the rights of way they are working on.
 - b. During replacement and/or repairing of strand and cable due to maintenance and damage, Construction Technicians must also check and correct all height problems on poles where maintenance and/or replacement of equipment is occurring.

System Monitoring

Purpose: Monitoring the Cable System is a means to identify and correct minor reception problems before they escalate and generate complaint calls from Subscribers.

The Grantee has several practices that proactively monitor the system to identify and resolve picture quality problems before they escalate into larger problems.

- Procedure:**
1. The PM Team has identified 30 test points, spread strategically throughout the system, that are monitored on a weekly basis.
 - a. The System Technicians have five test points within each of their management areas. One is checked each day of the week (Monday-Friday).
 - b. Each morning (Monday-Friday) the System Technician checks the signal and picture quality at the test point, including the peak to valley, channel to channel, and picture quality ratings. He or she then records the information on the End of Line Log.

- c. Any problems at the test point are corrected before the System Technician moves on to his or her next assignment.
 - d. The End of Line Logs are kept in the Technical Supervisor's office. The individual test point information are periodically reviewed to identify trends that may indicate a problem that is not obvious on a single end of line test.
 2. The Technical Supervisor and Dispatchers over the Service Team regularly monitor the "pool" of current and next day service calls.
 - a. If a potential problem has been identified, the Service Team notifies the PM Technical Supervisor.
 - b. The PM Technical Supervisor evaluates the information and addresses, then determines if any action is needed.
 - c. If the information indicates that there may be a problem, he directs the appropriate PM personnel to investigate and resolve any problem that is found.

Once the problem has been corrected, the PM Team notifies the appropriate Dispatch personnel, who in turn will call the Subscriber(s) affected by the problem to inform them that the problem has been corrected.

EXHIBIT 4

SYSTEM PERFORMANCE TEST METHODOLOGY

The Grantee and the City hereby agree to conduct performance testing of the Cable System under the following guidelines: (a) on a biennial basis for any given area until upgrade cascade reduction to eight or fewer amplifiers is complete for such area; and (b) if the performance of the Cable System should drop below FCC standards.

1. Tests will be conducted on mutually agreeable dates and times, such agreement to not be unreasonably withheld. Prior to the testing, the City will give the Grantee reasonable notice of specific tests which should be conducted. Such testing shall be coordinated with timeframes of semi-annual FCC required tests if possible, depending upon the availability of City or Grantee representatives at that time.
2. Provision and operation of performance test equipment is the responsibility of the Grantee's representative(s) in order to emulate previous tests as closely as possible and eliminate the need for City representatives to actually handle Grantee's plant components or equipment during this testing. No City representative is authorized by this Exhibit to handle Grantee's plant or equipment.
3. Test equipment will be timely calibrated to manufacturer specifications, with dated certificates attesting to same provided in advance of testing to avoid challenges to the methodology or results.
4. City representatives will record all readings and notations at each test site, witnessed and signed by attending Grantee and City representatives.
5. Following a review of routine headend log records used to monitor and document incoming and processed signal quality, measurements will be first taken at the appropriate headend before proceeding to the field.
6. Between six and ten test sites will be measured in the field, one to be at the end of the longest amplifier cascade in the system, and the other nine variously distributed throughout the area to be tested. On the day(s) of the testing, the sites will be selected by the City with input from the Grantee. At least seven days prior to the test date, the City will notify the Grantee of the number of sites to be tested (between six and ten).
7. The headend and test site readings will include FCC technical standards measurements under 47 CFR Part 76. The test point testing will include measurements of sweep up to 450 MHz in any biennial test prior to upgrade cascade reduction, but if the test is done after the upgrade is certified at the point tested, up to 750 MHz. The test point testing will also include visual carrier level, carrier noise, distortions, hum modulation. The tests will be conducted on eight channels, selected by the City with input from the Grantee, evenly distributed throughout the bandwidth being tested. In addition, picture quality will be reviewed at the test point using the TASO scale over the range of channels, including specifically each off-air channel.
8. Performance tests will include an A/B comparison of off-air local broadcast signals to the processed local broadcast signals at the Grantee's headend.
9. The Grantee may take corrective action in response to any deficient findings at any test point within 72 hours and have those sites re-tested for comparison with previous readings.
10. Failure of any one test point to meet FCC standards will not necessarily result in system failure of the entire performance test. Multiple failures at a test site or multiple failures at multiple test sites could contribute to failure of the system as a whole, unless

measurements at additional test sites beyond the original test sites lead the City to conclude that such failures were isolated and atypical.

11. All parties to the test B those in the headend and those in the field B will meet at the end of each test day for a brief review of the recorded objective and subjective observations. Copies of all notes, memos and recorded results shall be copied and shared at this time.

12. The City will provide written notification to the Grantee of any report or data received immediately upon receipt, and agrees, to the extent permitted by law, not to make public disclosure of such findings until the City has provided them to the Grantee and given the Grantee a reasonable opportunity to respond.

EXHIBIT 5

PEG SIGNAL INPUT SITES

See Section Seven.D.3

Access Origination Site

The Grantee shall insure that the following PEG Access sites have appropriate signal input points and equipment to conduct live cablecasting.

Public/Community Access - Double Helix, 625 North Euclid
 Educational Access - St. Louis Public School Studio at Beaumont High School, 3836 Natural Bridge Road
 Government Access - Communications Division, City of St. Louis, 4971 Oakland Avenue

Should any of the above access sites move to new locations, the Grantee shall work with the Agency to develop a timely transition of signal input points and equipment to the new access origination site.

Remote Origination Site

The Grantee shall provide to the City signal input points and equipment available at the sites listed below for the allowance of remote programming on the City's Government Access channel.

City Hall, Board of Aldermen Chamber
 City Hall, Mayor's Office
 City Hall, Room 208
 Police Department Training Academy
 Soldier's Memorial (CEMA location)
 Fire Department, 1421 N. Jefferson

The Grantee shall also allow the City to select one (1) additional remote origination site during the term of this Agreement. The City may make a written request to the Grantee for the additional remote site during any third (3rd) quarter of a calendar year. Upon receiving the request, the Grantee shall have until July 1st of the next calendar year to complete all work related to the remote site.

With the exception of the time requirement to complete the remote sites at City Hall within 12 months of the Franchise Effective Date, all other remote sites must be completed within 6 months after completion of the Cable System Upgrade if such remote sites are in the system upgrade areas. Should a remote site be located under a new build area, the remote site would be completed by the Grantee within 6 months after completion of the new build area.

EXHIBIT 6

MBE/WBE FRANCHISE AGREEMENT SECTION NINE CLASSIFICATIONS

The examples of contracts, services and materials are illustrative and not intended to be exhaustive. To extent other technical, professional services or construction contracts are awarded, or materials, supplies or goods are purchased, they are subject to the terms and conditions outlined herein.

Certain items could equally well be placed with the "technical services," "materials and supplies," or "construction" category (for example, a fleet contract for the combined purchase of tires and installation, or oil changes and vehicle repairs, or purchase of a copier with associated maintenance contracts). Assignment to one category or another should be consistent from quarter to quarter on the reports.

EXAMPLES OF PROFESSIONAL & TECHNICAL CONTRACTS

Architectural & Engineering Design Contracts
 Local Video Production & Channel Management
 Accounting & Tax Services
 Legal & Attorney Services*
 Payment & Collection Services

Security Guard, Armored Car & Safe Maintenance Services
 Janitorial Cleaning & Maintenance Services
 Real Estate Agent Services
 Vending Machine Contracts
 Installation, Maintenance & Repair Contracts*
 Telephone Answering Services
 Employee Screening & Testing*
 Local Advertising, Legal Notice & Want Ad Services
 Local Advertising (Includes Local Bulk Mail, Bill Stuffer & Marketing Services)
 Subscriber Installation Contracts
 Retrieval, Auditing & Disconnection Contracts
 Survey, Polling & General Consultant Services

EXAMPLES OF CONSTRUCTION CONTRACTS

Underground Conduit Installation, Trenching, and Boring
 Aerial Plant - Construction and Upgrades
 Pre-activation wiring of Subscriber Buildings
 Landscaping, Paving, Exterior Maintenance & Repair
 Plumbing, Electrical, HVAC Maintenance & Repair
 Buildings - Improvements, Renovation, New Construction

EXAMPLES OF MATERIALS & SUPPLIES PURCHASES

Vehicle Tires, Parts and Repairs
 Vehicle Gasoline & Oil
 Vehicles and Trucks*
 Radio and Telecom Equipment*
 Office Furniture, Equipment and Supplies
 Converters and Other Installation Parts*
 Miscellaneous Purchases over \$100
 Miscellaneous Tools and Equipment
 Headend, Transmission and Technical Equipment*
 Computer Hardware and Software*
 Locally Printed Materials and Stationary
 Logo and Signage*

EXAMPLES OF EXEMPT EXPENDITURES

Gas, Electric, Sewer & Water Bills
 Postage & Delivery Services
 Reimbursements to Employees
 National Billings
 Charitable Donations
 Rent
 Emergency Purchases Under \$100
 National Advertising
 Airline Tickets & Hotel Bills
 Local Phone Services
 Long Distance Phone Services
 Federal, State & Local Taxes

*These contracts, services and materials may be acquired by the Grantee in accordance with national policies and restrictions established by the Grantee's corporate parent. For example:

- 1) Requisitions: Regional warehouses store certain items, such as converters, amplifiers, cabling, connectors, taps, and passives which are purchased in bulk by the Grantee's corporate parent. The corporate parent requires the Grantee to acquire these items from the regional warehouses. Grantee does not actually "purchase" these materials and supplies from the vendor.
- 2) Sole Source: The corporate parent of Grantee may establish national contracts that require the Grantee to acquire certain items and services from specific sources. For example, as of the date of the adoption of the Cable Regulatory Ordinance, the Grantee was required to purchase copiers from Xerox, radio equipment from Nextel, telephone systems from Lucent Technologies, employee drug and background checks from Employee Screening, Inc. and computers from CompUSA. Grantee is bound by these contracts and does not have local discretion in choosing vendors.
- 3) Preferred Vendors: The corporate parent of Grantee has established national contracts with certain vendors for services or purchase. For example, as of the date of the adoption of the Cable Regulatory Ordinance, the corporate parent required Ford and GM for vehicle purchases or original manufacturers for equipment repair contracts. Grantee does not have local discretion to choose vendors for those services other than those contracted by the corporate parent.

Incorporating 100% of the amount of these expenditures in an MBE/WBE category would inappropriately skew results when the

Grantee has no choice over vendor selection. Therefore, the national portion of the expenditure is excluded from the MBE/WBE calculation. Some of the Grantee's national "sole source" or "preferred vendors" may use local subcontractors (for example, a local car dealership may take delivery and prepare a vehicle or a local contractor may assist with on-site installation, service, or maintenance of equipment). In regards to such national services and contracts established by the Grantee's parent the following apply:

- 1) The vendor should provide copies of its Affirmative Action and/or Non-Discrimination Plan to the Grantee.
- 2) To the extent, the nationally-selected vendor uses local subcontractors to deliver the services or materials, the MBE/WBE expenditure requirements apply to the portion of dollars expended locally.
- 3) Grantee must provide explanations or footnotes regarding such nationally required expenditures when submitting compliance reports and maintain total expenditure records which form the basis of such reports for verification.
- 4) If Grantee's parent no longer requires the Grantee to use nationally selected vendors, then MBE/WBE expenditures requirements will apply.

BOARD BILL #80

INTRODUCED BY ALDERMAN TERRY KENNEDY

An ordinance relating to broadband Internet access.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. Definitions

For the purposes of this ordinance, the following terms, phrases, and words shall have the meaning given herein, unless the context clearly indicates that another meaning is intended. 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 word "shall" is always mandatory and not merely directory.

- A. "Broadband" means having the capability of supporting, in both directions, a speed in excess of 200 kilobits per second in the last mile.
- B. "Broadband Internet user" means any residential customer who lawfully obtains broadband Internet access through facilities in the City's public rights-of-way, or any non-residential customer who lawfully obtains a type of broadband Internet access that is generally offered by the Internet access operator to residential customers.
- C. "Content" means any information, including without limitation HTML information, audio, video, and other data.
- D. "Internet access operator" means any entity owning facilities in the City's public rights-of-way whose facilities are used by any Person to provide broadband Internet access to Persons in the City.
- E. "Person" means any individual, firm, corporation, association, or other legally recognized entity.

SECTION TWO. Access to content generally

No Internet access operator shall impair, limit, or condition any broadband Internet user's ability to lawfully access any and all lawful content generally available to the public on the Internet.

SECTION THREE. Access to specific types of content

- A. No Internet access operator shall impair, limit, or condition any broadband Internet user's ability to lawfully access streaming video or audio.
- B. Internet access operators shall permit broadband Internet users to access the public Internet without being required to view proprietary content provided by the Internet access operator, or any affiliate.
- C. No Internet access operator shall require a broadband Internet user to use any particular first screen or category of first screen upon accessing the Internet. Rather, an Internet access operator shall allow a broadband Internet user to select any first screen of the user's choice, including a first screen of any Internet Service Provider.
- D. Internet access operators shall comply with all applicable law and regulation regarding accessibility to users with disabilities. Except as otherwise provided under applicable law or regulation, Internet access operators shall not adopt a policy of prohibiting the use of specialized end-user interfaces (such as interfaces designed for use by the disabled) by broadband Internet users, and shall take reasonable steps to ensure that their systems as designed and installed do not impede any use of such interfaces that are readily available as of the time of such design and installation.
- E. Notwithstanding the foregoing subsections of this Section Three, the following shall not constitute violations of this Section Three:

1. Reasonable technical restrictions on the bandwidth or data transmission rate available to any broadband Internet user needed to preserve service quality and speed of broadband Internet access.
2. Offering of different Internet access products to any and all broadband Internet users at different prices in different packages or with different capabilities.
3. Requirement that broadband Internet users pay their bills to the Internet access operator as a condition of continued service.
4. Otherwise lawful arrangements between the Internet access operator and Internet service providers.

SECTION FOUR. Support for Internet protocols

An Internet access operator shall maintain currency with generally accepted standards for interoperability with Internet protocol applications.

SECTION FIVE. Nondiscriminatory offering of Internet services

Once residential broadband Internet services are offered by an Internet access operator in the City, such services shall be made available to residences generally on a nondiscriminatory basis throughout the City, without regard to race, gender, religion or economic status; provided, however, that an Internet access operator may initially offer such service over a limited area as part of a gradual or phased construction or upgrade, so long as such initial offering is implemented on a non-discriminatory basis without regard to race, gender, religion or economic status.

SECTION SIX. Compliance with applicable law

In addition to the obligations otherwise set forth in this ordinance, an Internet access operator shall comply with all lawful federal and state requirements with respect to access to the Internet access operator's facilities for Internet service providers.

SECTION SEVEN. Rules of construction

- A. No provision of this ordinance shall be construed or applied so as to prohibit, condition or restrict the use by any cable operator of any type of subscriber equipment or any transmission technology as those terms are used in 47 U.S.C. § 544(e).
- B. No provision of this ordinance shall be construed or applied so as to regulate the content provided to any broadband Internet user.
- C. No provision of this ordinance shall be construed or applied so as to require any Internet access operator to dedicate any specific bandwidth to Internet access for the purpose of complying with this ordinance.
- D. No provision of this ordinance shall be construed or applied so as to authorize rate-of-return regulation or the regulation of an Internet access operator as a utility or common carrier to the extent such regulation would otherwise be prohibited by applicable law.
- E. No provision of this ordinance shall be construed or applied so as to regulate the rates an Internet access operator may charge its broadband Internet users for any service.
- F. No provision of this ordinance shall be construed or applied so as to prohibit otherwise lawful arrangements between the Internet access operator and Internet service providers.
- G. No provision of this Ordinance shall be construed or applied to prevent an Internet access operator from requiring a broadband Internet user to use a particular screen or specific software or software tools, which may incorporate proprietary names or logos, in order to facilitate selection among multiple Internet service providers.

SECTION EIGHT. Modification by state or federal law

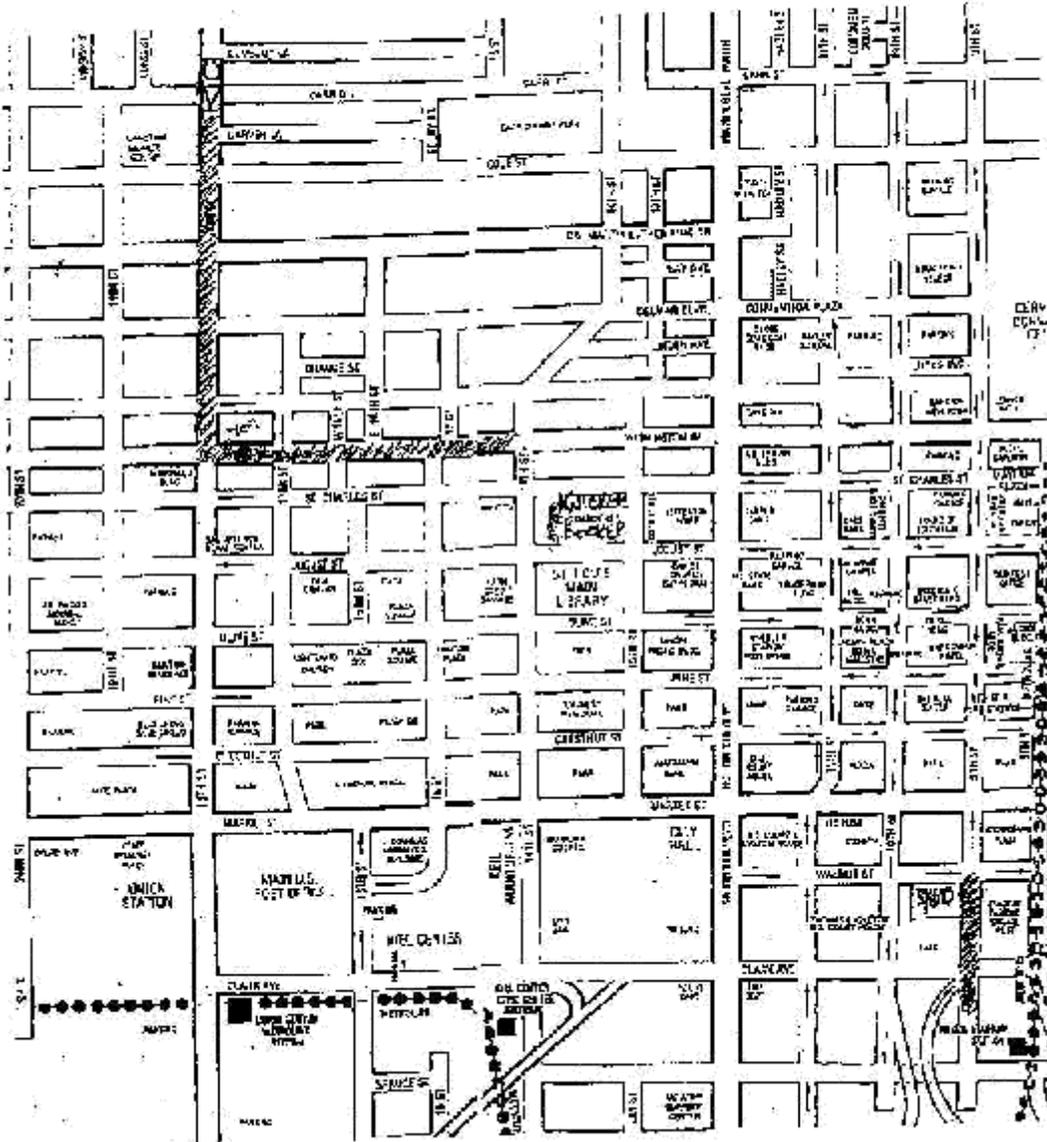
- A. If any provision of this ordinance is held by a court of competent jurisdiction to be invalid or in conflict with any applicable City, state, or federal law, then this ordinance shall be modified or suspended in such a manner as to implement the intent of this ordinance to the fullest extent possible consistent with the requirements of any such law, rule or regulation. If this ordinance cannot be modified or suspended in such a manner as to implement such intent, then this ordinance shall be deemed null and void.
- B. Notwithstanding the foregoing, the City recognizes that the subject matter of this ordinance is currently the subject of proceedings before the Federal Communications Commission (FCC), and also recognizes that any lawful determinations by the FCC regarding the subject matter of this ordinance that have preemptive effect pursuant to applicable law shall control.

Approved: July 10, 2001

ORDINANCE NO. 65210 - EXHIBIT 2 (WASHINGTON AVENUE AND CUPPLES STATION BUILD-OUT)
See Section Five .A.3

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Exhibit 2
Washington Avenue and
Cupples Station Build-Out



LEGEND
Build-Out Area