

CITY OF RIVER BLUFF
ORDINANCE NO. 1, SERIES 1982

AN ORDINANCE RELATING TO: CREATING A NON-EXCLUSIVE FRANCHISE AND ESTABLISHING CONDITIONS FOR AWARDING A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A COMMUNITY ANTENNAE TELEVISION SYSTEM WITHIN THE CITY OF RIVER BLUFF, KENTUCKY, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF SAID FRANCHISE.

BE IT ORDAINED BY THE CITY OF RIVER BLUFF, KENTUCKY AS FOLLOWS:
WHEREAS, the City Commission of River bluff finds that the development of a cable community antennae television system has the potential of having great benefit and impact upon the people of the City of River Bluff, and

WHEREAS, it is the intent of this ordinance and subsequent amendments to provide for and specify the means to obtain the best possible public interest and public purpose in these matters, and any franchise issued pursuant to this ordinance shall be deemed to include this finding as an integral part thereof, and

THEREFORE, be it ordained by the City Commission of the City of River Bluff, Kentucky, as follows:

SECTION 1. DEFINITIONS

For the purpose of this Ordinance and any Ordinance and Agreement awarding a franchise in accordance herewith, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein unless otherwise specifically provided in this Ordinance, unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of the City Commission. When not inconsistent with context, words used in the plural number include the singular number, and words in the singular number include the plural number. The City Commission shall be hereafter referred to as the City Council. Further, the word "shall" is always mandatory and not merely directory.

A. "Annual Gross Receipts" shall mean any and all compensation, revenue, and other consideration, derived directly or indirectly, in any form whatever, by a franchise, its affiliates, subsidiaries, parents from or in connection with, the operation of a cable communications system in the City.

B. "Applicant" shall mean the natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind which applies for a franchise to be granted under this Ordinance.

C. "Cable Communications System" shall mean any facility that, in whole or in part, receives directly or indirectly, and amplifies or otherwise modifies signals which transmit non-broadcast services, and/or programming broadcast or furnished by one or more television or radio stations or similar facility and distributes such signals by wire or cable to subscribing members of the public who pay for such service. Such definition shall not include any similar facility that serves only the residents of one or more apartment or condominium dwelling under common ownership, control or management, or otherwise, and commercial establishments located on the premises of such an apartment house or condominium dwelling.

D. "CATV shall mean a community antennae cable communications system, composed of, without limitation, antenna, cables, wires, lines, towers, facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing coaxial cable audio and/or visual radio, television, electronics or electrical signals to and from persons, subscribers, and locations in the City hereinafter defined.

E. "Certificate of Compliance" shall mean that approval required by the FCC in order for a franchisee to begin operation within the City hereinafter defined.

F. "City" shall mean the City of River Bluff, Kentucky, a municipal corporation in the Commonwealth of Kentucky.

G. "City Council" shall mean the present governing body of the City or any successor to the legislative powers of the present City Council.

H. "Converter" shall mean an interface device which may be furnished to subscribers in order that non-standard television channels carried on the cable communications system may be received on a conventional home television receiver, or to prevent interference from strong broadcast signals.

I. "Fair Market Value" shall mean the price that a willing buyer under no compulsion to buy would pay to a willing seller under no compulsion to sell.

J. "FCC" shall mean the Federal Communications Commission as that agency is presently constituted by the Communications Act of 1934 as amended, or any successor agency.

K. "Franchise" shall mean the non-exclusive rights granted hereunder to construct and operate a cable communications system along the streets, alleys, and public ways in the City.

L. "Franchisee" shall mean the natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind and the lawful successor, transferee, or assignee of same, granted a franchise by the City Council under this Ordinance.

M. "Person" shall mean any individual, partnership, association, corporation, joint venture, legal entity or organization of any kind.

N. "Service" shall mean all communications, maintenance, repair, and installation services provided by the franchisee, including the delivery of broadcast signals and programming covered by the regular monthly charge paid by all subscribers, including such standard type of service that is normally furnished by CATV franchisees for a regular monthly charge and such additional communications services as are furnished as a part of the cable communications system in the way of two way, return-path services.

O. "State" shall mean the Commonwealth of Kentucky.

P. "Street" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, or other public right-of-way including public utility easements or right-of-way and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City which shall entitle the City and the franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the franchisee's cable communications system. Said word shall also mean any easement now or hereafter held by the City for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the City, which shall within their proper use and meaning entitle the City and the franchisee to the use thereof for the purposes of installing or transmitting cable communications transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable communications system.

Q. "Subscriber" shall mean any person who contracts the purchase, orally or in writing, of any service as may be provided by a franchisee's cable communications system.

R. "Substantial Completion" shall mean that point at which sufficient distribution facilities have been installed by the franchisee so as to provide service to at least ninety (90) percent of the dwelling units in the franchise territory as described in Section 10 of this Ordinance.

SECTION 2. FRANCHISE TERM

The City council of the City hereby creates the right, privilege and franchise to construct, operate, and maintain a community antennae television system in the streets of the City, subject to the conditions and restrictions as hereinafter provided; and said right, privilege and franchise shall be offered to potential applicants and granted by the City Council to the applicant presenting the best legal, character, financial, technical and other qualifications, and whose construction plans and arrangements can be shown to be both feasible and adequate to meet the minimum requirements herein established. The franchise shall run for a period of fifteen (15) years commencing on the date the franchise is awarded at the end of which time it may be renewed subject to the approval of the City Council and the provisions of the constitution and the statutes of the Commonwealth of Kentucky governing term and sale of franchises then in force and effect. Any such franchise hereunder shall designate and be conditioned upon the acceptance by a franchisee of all the terms of this Ordinance and any amendments properly made thereto.

SECTION 3. SIGNIFICANCE OF FRANCHISE

A. Any franchise granted hereafter by the City shall not be exclusive and the City reserves the right to grant a similar franchise to any other persons or entities at any time.

B. No privilege or exemption shall be inferred from the granting of any franchise unless it is specifically proscribed.

C. Any franchise granted hereunder shall give to the franchisee the right and privilege to construct, erect, operate, modify and maintain in, upon, along, above, over and under the streets, alleys and public places of the incorporated areas of the City such cables, electronic equipment and other network appurtenances necessary for the operation of a cable communications system in the City; provided, however that the exercise of such right and privilege shall not interfere with the use of such streets, alleys and public places by the City and such others as are permitted by the City to use same, and the City Council may demand the removal of the foregoing as have been constructed by or under contract with a franchisee at such time as the City Council in its sole discretion determines that same are interfering with the use of said streets, alleys or public places or the aesthetic character of the City; and

D. Any franchise granted hereunder shall be a privilege to the held for the benefit of the public.

E. Prior approval of the City Council shall be required and obtained where ownership or control of more than twenty-five percent (25%) of the right of control of any franchisee is acquired, disposed of, or transferred by a person or group of persons acting in concert. Approval of the City Council to such a transfer of interest shall not be unreasonably withheld. Transfer from a subsidiary to a parent corporation, or vice versa, shall not be considered as a change of control.

F. Nothing in this Ordinance shall be deemed to prohibit the mortgage of the pledge of the network or any part thereof or a leasing by a franchisee from another person of said network or part thereof for financing purposes or otherwise. However, any such mortgage, pledge or lease shall be subject to the rights of the City Council under this Ordinance, a franchise granted hereunder, and all other applicable laws.

G. Any franchise granted hereunder shall not relieve the franchisee of its obligation to obtain necessary pole or conduit use agreements as are necessary.

H. The award of any franchise hereunder shall not impart to the franchisee any right of ownership of streets or City-owned property.

I. Any franchise granted hereunder shall be binding upon the franchisee, its successors, lessees or assignees.

J. A franchisee, at its expense, shall comply with all applicable laws, orders, ordinances and regulations of federal, state, City and County or municipal authorities including those established to protect historic districts and/or designated landmark sites.

SECTION 4. PARTIAL LISTING OF RIGHTS RESERVED TO THE CITY

A. The City reserves such rights and powers which under applicable federal or state law or regulations, the City must reserve and maintain. Franchisee agrees to comply with any action or requirements of the City in the exercise of such rights and powers which either have been or shall subsequent to the grant of said franchise be enacted or established.

B. The City may designate and transfer its obligations and duties under the franchise to any elected official, officer, employee, department, agent, board or Commission of the City and a franchisee shall recognize the authority of any such transferee.

C. The City may inspect all construction or installation work performed pursuant to the franchise grant under this Ordinance.

D. Neither the granting of any franchise hereafter nor any provisions hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

SECTION 5. APPLICATION FOR A FRANCHISE

Applications for an original franchise grant hereunder shall be filed with the City Clerk, and shall contain the following written information and provisions:

A. Bid Bond/Filing Fee - Applications shall be submitted with the bid bond as required by the requirements of Section 8 of this Ordinance, and shall be accompanied by a non-refundable filing fee of Five Hundred Dollars (\$500) payable to the City.

B. The application shall include:

1. A full disclosure of the ownership of the facilities to be used in rendering the service.
2. A detailed schedule of the rates to be charged for the services offered, the facilities to be employed, the service area or areas, the commencement and completion dates of construction of the CATV System and the proposed dates the service will be available to the areas named.
3. A detailed schedule of rates to be charged for the services offered to residential, apartment, commercial and other users of service.

C. All applications shall be open to public inspection, shall be kept on file a reasonable length of time and any intentional misrepresentation in an application shall be grounds for its rejection or for termination of the franchise.

D. All applications shall be considered firm and final and shall be signed and verified by the applicants whose relationship to the applicant shall be set forth and shall bind the applicant to the provisions thereof and to applicant's responses thereto.

E. The City Council shall receive the report and recommendations of the Mayor, shall consider the same together with such application, and comments of the public and shall make its determination either that such application be accepted upon such terms and conditions as the council shall determine, or that such application be rejected. In making any determination as to any application, the council shall consider the quality of the service proposed, rates to subscribers, income to the City, experience, character and financial responsibility of the applicant and its management by owners, the technical and performance quality of the equipment to be used, the willingness and ability of the applicant to meet construction and physical requirements, policy conditions, franchise limitations, and requirements imposed by this ordinance and any other considerations deemed pertinent by the council.

F. Supplementation to Applications - The City Council reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determinations.

SECTION 6. ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE

A. Any franchise granted hereunder, together with the rights, privileges and authority granted thereby, shall take effect and be in force from and after the effective date of an Ordinance awarding a franchise hereunder, provided that on or before said date the franchisee shall:

1. File with the City an unconditional acceptance of the franchise grant and enter into and execute such contracts and documents as required by the City Council consistent with the terms and provisions of this Ordinance and such other terms and provisions as were negotiated by the franchisee and the City Council consistent with the application of the franchisee.
2. File certificate of insurance as set forth in Section 8 herein.
3. File such bond or bonds as required in Section 8 herein.
4. Reimburse the City for the costs of publication of this Ordinance awarding the franchise, together with incidental expenses and reasonable attorney's fees.
5. Advise the City Council in writing of the franchisee's location and its address for mail and official notifications from the City Council.

B In the event the franchisee fails to comply in full with Section 6, subsection A above, then it shall be conclusively considered that the franchisee has abandoned its application and rights to such grant and award of the franchise, and any such rights that the franchisee may have acquired under the Ordinance shall immediately terminate, and the franchisee shall have no right, privilege or authority whatsoever under this Ordinance.

C. The franchisee shall have no recourse whatsoever against the City for or on account of any loss, cost, expense or damage arising out of any provisions or requirements of this ordinance and/or the ordinance awarding the franchise or any amendments thereto or rules or regulations thereunder.

D. The franchisee, by acceptance of any franchise awarded hereunder, acknowledges that it has relied upon its own investigation and understanding of the power and authority of the City Council to grant such a franchise.

E. The franchisee, by acceptance of any franchise awarded hereunder, acknowledges: that it has thoroughly examined and is familiar with the terms and conditions of this Ordinance, the ordinance awarding the franchise, and such other contracts and documents entered into by the franchisee relative to the franchise.

F. The franchisee by acceptance of any franchise awarded hereunder acknowledges and agrees that the matters contained in the franchisee's application for franchise a supplements thereto, shall be incorporated into the ordinance awarding the franchise as though set out verbatim and shall thereafter be considered an integral part of such ordinance in all communications, correspondence, filings or applications with all appropriate regulatory agencies, including the FCC.

SECTION 7. INDEMNITY

A. Hold harmless agreement. Franchisee shall indemnify and hold harmless the City, its officers, boards, commissions, agents and employees, against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages (including but not limited to damages to City property and damages arising out of copyright infringements, and damages arising out of any failure by franchisee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by franchisee's cable television system), costs or liabilities (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to person or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, cost and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the exercise of the enjoyment of any franchise hereunder by franchisee, or the granting thereof by the City.

B. Defense of litigation. Franchisee shall at the sole risk and expense of franchisee, upon demand of the City, made by and through the City attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents or employees, and arising out of or pertaining to the exercise or the enjoyment of such franchise, or the granting thereof by the City.

Franchisee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against franchisee, the City, its officers, boards, commissions, agents or employees in any of these premises; and such indemnity shall exist and continue with reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise; provided, that neither franchisee nor City shall enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding, without first obtaining the written consent of the other.

SECTION 8. BONDS AND INSURANCE

A. All persons submitting an application for a franchise in accordance herewith shall file with their application bonds solely for the protection of the City with corporate surety or sureties as follows:

1. A bid bond in the amount of \$10,000 which shall indemnify the City up to the full amount of said bond for any damages or losses arising out of the failure of the franchisee to execute an agreement in the form proposed under this Ordinance; and

2. A construction bond in the amount of \$25,000 to be effective from the date of execution of the franchise agreement and the effective date of the Ordinance awarding the franchise hereunder, and thereafter until the cable communications systems referred to therein is certified completed by the Mayor. The Bond required under this section shall indemnify the City in its own right and as trustee for subscribers up to the full amount of said bond from any damages or losses arising out of the failure of the franchisee to faithfully perform and satisfactorily complete construction of the cable communication system in accordance with this Ordinance and any agreement or Ordinance in connection with, including but not limited to, the cost of removal of any construction, and

3. All persons submitting an application for a franchise in accordance herewith shall file with their application a bond with a corporate surety in the amount of \$25,000 to be effective upon the execution of the franchise agreement and the effective date of the Ordinance awarding the franchise hereunder, and conditioned that in the event that the franchisee fails to comply with any provision of this Ordinance or agreement or Ordinance awarding a franchise in accordance herewith, then there shall be recovered jointly and severally from the principals and surety any and all damages or costs suffered or incurred by the City or any subscriber as a result thereof, including but not limited to, costs and reasonable attorney's fees of any action or proceeding, and including the full amount of any compensation, indemnification, costs of removal or abandonment of any property or other costs which may be in default, up to the full principal amount of such bond; this condition shall be a continuing obligation during the entire term of any agreement or Ordinance or Ordinances awarded the franchisee in accordance herewith and thereafter until the franchisee shall have satisfied in full any and all obligations to the City which arise out of or pertain to same; and

4. None of the provisions of this section nor any bond accepted by the City pursuant thereto, nor any damages recovered by the City thereunder, shall be construed to excuse the faithful performance by or limit the liability of the franchisee under this Ordinance or any agreement or Ordinance awarding a franchise in accordance herewith for damages either to the full amount of said bond or otherwise.

B. Within thirty (3) days after the granting of the franchise and at all times during the term of the franchise, franchisee shall obtain and pay all premiums for the following:

1. A general comprehensive public liability insurance policy indemnifying, defending, and saving harmless the City, its officers, board, commissions, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of a franchisee under the franchise herein granted, or alleged to have been so caused or incurred with a minimum liability of Three Hundred Fifty Thousand Dollars (\$350,000) for bodily injury or death of any one (1) person and Seven Hundred Fifty Thousand Dollars (\$750,000) for bodily injuries or death to two (2) or any more persons in any one (1) occurrence.

2. Property damage insurance indemnifying, defending and saving harmless the City, its officers, boards, commissions, agents and employees from and against all claims by any person whatsoever for property damage occasioned by the operation of franchisee under the franchise herein granted, or alleged to have been so lost or incurred with a minimum liability of Three Hundred Fifty Thousand Dollars (\$350,000) for property damage to any one (1) person and Seven Hundred Fifty Thousand Dollars (\$750,000) for property damage to two (2) or more persons in any one (1) occurrence.

C. Such Insurance as provided for in this section shall be kept in full force and effect by the franchisee during the existence of the franchise with insurance companies qualified to do business in the Commonwealth of Kentucky. The policies shall require thirty (30) days written notice to both City and franchisee herein prior to any cancellation thereof, and copies of said policies shall be filed with the City.

SECTION 9. FRANCHISE CONSIDERATION

A. A franchisee herein shall pay to the City as consideration during the life of the franchise the sum of not less than three percent (3%) of the annual gross receipts of such franchise. Such payment shall be in addition to any other payment owed to the City by the franchisee and shall not be construed as payment in lieu of personal or real property taxes levied by state, city, or county authorities. A franchisee shall annually file with the City forty-five (45) days after the expiration of each fiscal year a financial statement showing in detail the gross annual receipts as defined herein of the franchisee during that fiscal year. It shall be the duty of the franchisee to pay to the City at the time of filing said financial statement the sums of consideration hereinabove prescribed.

B. In the event the franchise should be terminated or forfeited prior to the end of the fifteen (15) year term, the franchisee shall immediately submit to the City Council a financial statement prepared as before required, showing the gross receipts of the franchisee for the time elapsed since the last period it paid to the City the required percentage of gross annual receipts, and the franchisee shall pay to the

City not later than thirty (3) days following the termination of the franchise, a like percentage of such gross receipts and any other sums legally due and owing to the City.

C. In the event that any statement and/or payment is not made on or before the applicable date fixed in subsection A hereof, interest on such payments shall apply from such date at the current prime interest rate.

D. The City shall have the right to inspect a franchisee's records showing the gross receipts from which its franchise payments are computed and shall have the right of audit and recomputation of any and all amounts paid under the franchise. No acceptance of any payment by the City shall be construed as a release of or an accord or satisfaction of any claim the City construed as a release of or an accord or satisfaction of any claim the City might have for further or additional sums payable under the terms of this ordinance or for any other performance or obligation of a franchisee hereunder.

E. Payments of compensation made by a franchisee to the City pursuant to the provisions of this ordinance shall not be considered in the nature of a tax, but shall be in addition to any and all taxes which are now or hereafter required to be paid by any law of the United States, the State of Kentucky, or the City.

F. Sales taxes or any other taxes which are collected from subscribers by a franchisee and are to be remitted to a governmental agency, shall be deducted from the annual gross revenues.

G. Should the FCC or other governmental agency cease to regulate the amount of percentage sums payable hereunder, then in that event the City Council and any franchisee shall have the right to immediately renegotiate the sum and manner of calculation of franchise payments payable hereunder shall be conditioned upon and subject to agreement on same between the City and any franchisee.

SECTION 10. FRANCHISE TERRITORY

A. Any ordinance awarding a franchise to operate a cable communications system in accordance herewith shall apply to its operation throughout all of the incorporated areas of the City as now or may in the future exist.

B. The franchisee shall endeavor to offer cable communications service to all residents of the City. To the extent that the franchisee intends not to provide service to any specific area, street, building or other location, the franchisee shall designate same and clearly indicate in its application for a franchise in accordance herewith the technical or economic reason for its inability to provide service in the enumerated locations.

C. The franchisee is not required under this Ordinance or any contract granted hereunder to extend its facilities to any area unless there exists in that area a potential of at least thirty-five (35) subscribers per mile of trunk cable system. When the potential of 35 subscribers per mile does not exist, the company may make a charge at actual cost, including labor and material for cable extension, for service in this portion of the system.

SECTION 11. TIME SCHEDULE AFTER FRANCHISE IS GRANTED

The franchisee shall adhere to the following time schedules:

A. Within sixty (60) days after the effective date of the Ordinance awarding the franchise, the franchisee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, and utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of CATV systems, or their associated micro-wave transmission facilities.

B. The company agrees to comply with all of the procedural requirements of the FCC. The franchisee shall notify all necessary parties, including the FCC, within thirty (30) days following the effective date of the Ordinance awarding a franchise hereunder of its intent to operate a cable communications system and shall begin construction with time period set for in the franchisee's application for a franchise hereunder. If for any reason the franchisee has not notified all parties within the thirty (30) days, then the franchise shall be considered null and void.

C. Within the time period as specified in the franchisee's proposal, the franchisee shall have achieved substantial completion of construction. However, the date to substantially complete construction shall be extended by the number of days of delay of the franchisee

caused by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualty or other such delay authorized by the City Council.

SECTION 12. INSTALLATION AND EXTENSION OF SERVICE

A. The franchise shall extend cable to new developments and subdivisions and to other areas, including, but not limited to, blocks or streets, simultaneously with the installation of electric power and telephone utility facilities, provided same is contiguous to any part of the installed CATV system. If it is not, then service shall be extended as soon as same is contiguous to any part of the installed CATV system.

B. In all cases where new developments and subdivisions are to be constructed and to be served in whole or in part by both underground power and telephone utilities, the owner or developer of such areas shall provide the franchisee the trench, backfill and all necessary substructures for cables in order that the franchisee may install all necessary electronic cable communications facilities. In no event shall such undergrounding be at any cost or expense to the City.

C. Failure to install cable in accordance with the construction timetable as provided in Section 11 hereof, or to extend cable within ninety (90) days of a subscriber's request for service to new developments, subdivisions or other areas in instances controlled by Part A and B above hereof shall constitute a violation of this Ordinance and a material breach of any agreement awarding a franchise in accordance herewith shall subject the franchisee to all the penalties and remedies prescribed in this Ordinance as well as all other remedies, both legal and equitable, which are available to the City.

D. Cable communications service shall be made available to all individual dwellings, residences, including apartments, condominiums, co-operative or associate buildings, institutions, organizations, businesses and all other entities within the designated franchise area as the same now or in the future may exist.

E. Installation and service fees for the first television set of any subscriber shall be uniform for all entities listed in Part D above.

1. Installation or subscriber use of cable communications system service which involves retransmission of the cable signal to multiple reception points within a structure shall be negotiated separately by the franchisee and the owner of the structure or the subscriber. Service to condominium buildings shall be on such conditions as the governing body of the tenants in common may provide and as are agreed upon by the franchisee. Neither the franchisee nor the City shall be responsible or liable for any failure to provide cable communications service to a lessee or condominium owner whose lessor or governing body refuses the installation of such service. The provision of cable communications services to any multiple dwelling structure shall not be conditioned upon the purchase by the owner, lessor or governing body of such structure of any service of the franchisee or any person designated by it.

F. Residential installation, including multiple drops, shall be offered as the feeder line passes the dwelling unit.

G. All of the franchisee's cable equipment shall be removed within a reasonable time, such time not to exceed one month from a subscriber's property at the subscriber's written request.

1. Where such removal interferes with the provision of cable communications services to another subscriber, it shall be the obligation of the subscriber so affected to secure a legal agreement which will enable the franchisee to provide the subscriber the cable communications service the subscriber desires.

2. Where attachment to or use of a non-subscriber's property is necessary for the provision of cable communications services to a subscriber, it shall be the obligation of such subscriber to secure a legal agreement which will enable the franchisee to provide the service the subscriber desires.

H. Nothing in this Ordinance shall be construed as a representation, promise or guarantee by the City that any permit or other authorization required under any City law for the construction or installation of a cable communications system shall be issued.

SECTION 13. SERVICE TO CUSTOMERS

A. The cable communications system shall be designed for operation twenty-four (24) hours per day and shall endure service interruptions only for good cause and for a reasonable time. Permissible interruptions of service shall be for the shortest possible time.

B. The franchise shall have a publicly listed telephone number.

1. The franchisee shall employ an operator or maintain a telephone answering device twenty-four (24) hours per day, each day of the year to receive subscriber complaints.

C. The franchisee shall maintain a maintenance and repair service capable of responding to subscriber complaints or requests for repairs within 24 hours after the receipt of the complaint or request. If the franchisee or any of its shareholders owning at least three percent (3%) of its stock, or any subsidiary, parent or affiliated corporation of the franchisee engages in the business or activity of selling, leasing, repairing, dismantling or installing television or radio receivers, or accessories for such receivers, cameras, audio or video tape machines, video tapes, microphones, control boxes, modulators, or other equipment utilized by users or subscribers in the operation of any cable communications system, the franchisee shall not condition cable communications service or the continuation thereof or usage of cable communications facility on a subscriber's purchase of or failure to purchase any such services or equipment.

D. In the event that its service to subscribers is interrupted for forty-eight (48) or more consecutive hours, except for acts of God, riots, or a state of emergency declared by the President of the United States, the Governor of the Commonwealth of Kentucky, or the County Judge/Executive of Oldham County, Kentucky, the franchisee shall grant affected subscriber a pro rata credit or rebate for the duration of the interruption. An unreasonable interruption of subscriber services shall be deemed a violation of this Ordinance and a breach of any agreement awarding a franchise in accordance herewith and subject the franchisee to all of the penalties and remedies prescribed in the Agreement as well as all other remedies, both legal and equitable, which are available to the City.

F. The Franchisee shall not deny or delay service or use of cable communications facility or otherwise discriminate against subscribers or users on the basis of age, race, creed, color, sex, national origin, or marital status.

G. The franchisee shall maintain in constant readiness equipment capable of providing standby powering for the headend, transportation and trunk amplifiers for a minimum of four (4) hours.

1. Said equipment shall be constructed so as to revert automatically to a standby mode when alternating current power returns.

2. The Franchisee shall comply with all utility and other safety regulations to prevent a standby generator from powering the "dead" utility line so as to prevent injury to any person.

SECTION 14. SYSTEM DESIGN

The franchisee shall install a first quality cable system, using equipment designated by a major supplier of CATV equipment.

1. All necessary return - path, amplifiers and/or amplifier modules shall provide maximum two-way service capability, and shall be installed at the time of initial construction.

2. The number of channels to be provided and their use shall be described in the franchise proposal.

SECTION 15. PRIVACY

The franchisee shall strictly observe the privacy and property rights of subscribers. The subscriber's rights of privacy shall be protected at all times by the franchisee. Individual subscriber preferences, viewing habits, beliefs, philosophy, creeds, religions or political beliefs shall not be revealed to any person, firm, agency, governmental unit, police department or investigating agency unless upon the authority of a court of law or upon prior voluntary valid written authorization of the subscriber, which shall not in any event be required as a condition of receiving service.

A. Without the authorization described herein, neither the franchisee nor any other person shall in any manner activate, utilize or otherwise operate any channel from a subscriber's location.

B. Every subscriber shall have the absolute right to deactivate the return path from the subscriber's receiver at the franchisee's sole cost.

C. The franchisee shall not tabulate any test results, nor permit the use of its cable communications system for such tabulation, which would reveal the commercial product preferences or opinions of subscribers, members of their families or their invitees, licensees or employees.

D. Violation of any provision of this section of this Ordinance shall be considered a material breach of this Ordinance and any agreement or Ordinance awarding a franchise in accordance herewith and shall subject the franchisee to all penalties and remedies prescribed in this Ordinance as well as all other legal or equitable remedies available to the City.

E. Each compilation, publication, tabulation or other dissemination of each piece of information made or permitted to be made in violation of this section shall be considered a separate violation of this Ordinance.

F. A subscriber may at any time revoke any authorization previously made, by delivering to the franchisee in writing a substantial indication of his intent to so revoke. Any such revocation shall be effective on receipt by the franchisee.

SECTION 16. INTERCONNECTION

A. Nothing in this Ordinance shall be construed to as to prohibit the franchisee from interconnecting its network with other similar networks either in the City or in other municipalities, counties or states or countries. Any applicable revenues derived therefrom shall be equitably allocated in the calculation of annual gross subscriber revenues.

SECTION 17. EMERGENCIES

A. If at any time, in case of fire or disaster in the City, it shall become necessary in the reasonable judgement of the Mayor of the City to cut or move any of the wires, cables, amplifiers, or other appurtenances to the network of the franchisee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the franchisee, at its sole expense provided that such repairs are not necessitated by a negligent act of the City in which case, cost for repairs shall be borne by the City.

SECTION 18. RATES

A. The City Council expressly reserves the right and retains its or the fire department or districts servicing the City from time to time, jurisdiction to authorize, establish and approve all rates which the franchisee charges subscribers, including rates for subscriber service, equipment, maintenance and repair. By acceptance of a franchise, the franchisee agrees that the City Council shall have such power, right and jurisdiction. All rates and charges shall be non-discriminatory.

B. No rate, fee or charge of any kind shall be charged or collected from subscribers by the franchisee without the authorization and approval of the City Council. Violation of this section shall be deemed to be a breach of any agreement awarding a franchise in accordance herewith and shall subject the franchisee to all remedies and penalties prescribed in this Ordinance and to all other remedies, legal and equitable, which are available to the City.

C. The initial rates to be charged and collected from subscribers shall be in conformity with the franchisee's application hereunder, and established in the Agreement awarding a franchise in accordance herewith, and shall remain in force for a minimum of thirty (30) months from and after the date of completion of the CATV system awarded under this franchise. Provided, however, that should the City Council determine to amend any franchise within the purview of Section 28 hereof, the franchisee may request rate increases or decreases in accordance with this Section.

D. The franchisee shall file with the City Clerk on December 31 each year a full schedule of all subscriber and user rates and all other charges made in connection with the operation of the cable communications system.

1. Any and all special rates for institutions, motels, hotels, inns, multiple-family dwelling units, or any other type of sub-dwelling units, or any other type of subscriber shall be included.

2. All rates shall be on file in the office of the City Clerk of the City.

#. Nothing in this Ordinance shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers of users.

F. The franchisee shall neither impose nor collect any additional charge for the disconnection of any installation or outlet.

G. In the event that a subscriber fails to pay a properly due and owing fee or charge, the franchisee may disconnect the subscriber's service outlet, upon given ten (10) days written notice thereof.

H. The franchisee shall establish and conform to the following policy regarding refunds to subscribers and users.

1. If the franchisee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the franchisee shall provide said service or equipment within thirty (30) days of the collection of the deposit or charge or it shall refund said deposit or charge within five (5) days thereafter.

(a) Nothing in this Ordinance shall be construed to relieve the franchisee of any responsibility to subscribers or users under any contractual agreements into which it enters with them.

(b) Nothing in this section shall be construed as limiting the franchisee's liability for penalties which may be imposed under this Ordinance or for the violation or breach of any of its provisions.

(c) Nothing in this section shall be construed to limit the franchisee's liability for damages because of its failure to provide the service for which the deposit or charge was made.

2. In the event that a subscriber terminates service during the first twelve (12) months because of the failure of the franchisee to render the service in accordance with the requirements set forth in this Ordinance, or in any Agreement or Ordinance in accordance herewith, the franchisee shall refund to such subscriber an amount equal to the initial applicable installation or reconnection charge paid by the subscriber.

(a) In the event that such subscriber has made an advance payment the amount so advanced shall be refunded to such subscriber by the franchisee. Nothing in this provision shall be construed to relieve the franchisee of any liability established under any other provision of this Ordinance or any Agreement or Ordinance in accordance herewith.

3. In the event that a subscriber terminates service prior to the end of a pre-paid period, the pro rata portion of any prepaid subscriber fee which represents payment for services which are no longer to be rendered, shall be refunded promptly, but in no case more than thirty (30) days after receipt of the request for termination.

I. The franchisee shall not charge a converter security deposit greater than said converter's actual cost to the franchisee. Any converter security deposit collected by the franchisee shall be returned to the subscriber thirty-six (36) months after the installation of such converter or within sixty (60) days upon termination of service by the subscriber and return of converter undamaged, with allowance for reasonable wear and tear, and payment of any outstanding balance due and payable.

J. A franchisee may, from time to time, subject to the limitation contained in subsection C hereinabove, request of the City Council rate increases or decreases. A franchisee shall be allowed to increase its rates and charges if it is able to demonstrate to the satisfaction of the City Council that it is unable to realize a fair return on its investment without a rate or charge increase. The City Council shall establish the procedure for hearings and review of any such request. The City Council may allow rate or charge reduction at any time if it shall determine that the existing rates and charges unreasonably restrict the growth of cable television in the City and that the proposed rates and charges will continue to allow the franchisee a reasonable profit. Any such request shall be made no less than sixty (60) days in advance of the effective date of the change or changes requested.

K. A franchisee may, at any time, request of the City Council, establishment, authorization, and approval of rates and charges for new or additional services which the franchisee desires to offer its subscribers. Any such request shall be made no less than sixty (60) days in advance of the offering of such new or additional services.

L. In the event the franchisee for the City also has a CATV franchise for the unincorporated area of Oldham County, Kentucky, the rates for like services in the City shall not exceed the rates charged for identical services in the unincorporated area of Oldham County. In the event that the Fiscal Court of Oldham County approves a rate increase or reduction for the same CATV franchisee that has the City franchise, the franchisee shall within ten (10) days thereafter file with the City Clerk of the City a complete schedule of the Oldham County approved CATV rates. The City Clerk shall forthwith advise all members of the City Council and the Mayor of the approved Oldham County CATV rate schedule. Unless the franchisee, a member of the City Council, or the Mayor requests a CATV rate hearing for city rates within sixty (60) days after the filing of the approved Oldham County CATV rate schedule with the City Clerk, the approved Oldham County CATV rate schedule shall automatically be the approved and authorized CATV rate schedule for the City, effective sixty-one (61) days after the approved Oldham County CATV rate schedule is filed with the City Clerk by the franchisee.

M. No charge shall be made to the City for its use of government access channels, and under no circumstances shall the City be obligated to pay to a franchisee any fee for service rendered to the City under the terms of the franchise.

N. Nothing herein shall be deemed to prohibit the setting of special rates for certain classes of citizens for certain types of subscriber service, when, by the determination of the City Council, and at its sole discretion, such special rates are justified by the potential of such service to assist with the health, care and/or safety of such citizens.

SECTION 19. POLICE POWERS

Nothing in this Ordinance or in any Agreement or Ordinance in accordance herewith shall be construed as an abrogation by the City of any of its police powers.

SECTION 20. TRANSFER AND ASSIGNMENTS

A. The franchisee shall not transfer, assign, sell, lease or dispose of, its interest in any franchise or ordinance or agreement awarding a franchise in accordance herewith or in its cable communications system without the prior written authorization of the City Council. A merger or consolidation shall be deemed a transfer or assignment.

B. During the term of any franchise, the franchisee shall not sell, transfer, assign, lease, dispose of, exchange or release of more than twenty-five percentum (25%) of the ownership of its cable communications system to a person, (hereinafter "proposed transferee") without the prior written authorization of City Council. The City Council may require such information as it reasonably deems necessary from the franchisee in connection with a proposal to sell, transfer, assign, lease, dispose of, exchange or release of more than 25 percentum (25%) of the ownership of its cable communications system.

C. Any proposed transferee shall execute an agreement, in the form and containing the conditions approved by the City Attorney that it will assume and be bound by all of the provisions, terms and conditions of this Ordinance and any agreement or Ordinance in accordance herewith and all applicable federal, state, and local laws and further that it shall be primarily liable and obligated under said documents without, however, relieving the franchisee from its obligations to the City under said document.

D. No transfer under subsection A or B of this Section shall be made within thirteen (13) months of the termination date of the term of franchise Agreement.

E. Nothing in any approval by the City Council of any transfer or assignment of any ownership interest pursuant to subsections A and B of this Section shall be construed to waive or release any rights of the City in and to the streets, public ways and public places of the City or as a release of any of the city's police powers.

F. The occurrence of any event which constitutes either grounds for entry of an Order for Relief under the United States Bankruptcy Code, or placement of the franchisee into receivership, or the issuance of any order to the franchisee or any of its stockholders by a government agency or court of competent jurisdiction to divest any interest related to the cable communications system hereunder, or the entry of any judgment against the franchisee which, in the opinion of the City Council impairs the franchisee's credit shall be deemed an unauthorized transfer and assignment under the provisions of this section and shall:

1. Be deemed a material breach and default of any agreement or ordinance awarding a franchise in accordance herewith, and

2. Subject the franchisee to all penalties and remedies prescribed in the agreement and to all other remedies, legal and equitable which are available to the City.

G. The occurrence of an unauthorized transfer or assignment may, at the option of the City, terminate any Agreement and franchise and accelerate all of the obligations and rights thereunder including, inter alia, the right of the City to purchase the cable communications system at book value or to award a franchise to another person.

1. The franchisee shall notify the City Clerk of any occurrence which constitutes an unauthorized transfer under the provisions of Part F. hereof and of the entry of any judgment against it within twenty-four (24) hours of such occurrence.

H. From and after any of the occurrences enumerated in Part F hereof, the franchisee shall not make, execute or enter into any deed, deed of trust, mortgage, contract, conditional sales contract or any loan, lease, pledge, sale, pole agreement or any other agreement or hypothecation concerning any of the facilities or property, real or personal, of the cable communications system without the written approval of City Council.

SECTION 21. ABANDONMENT

In the event that the use of any part of the system is discontinued for any reason by any franchisee for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street or public place without complying with requirements of this Ordinance, or the rights granted hereunder have been terminated, canceled or have expired, the franchisee shall promptly remove from the streets and public places all such property and poles of such system, other than any which the City may permit to be abandoned in place. In the event of such removal, the franchisee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City Council. Any property of a franchisee to be abandoned in place, shall be abandoned in such manner as City Council may prescribe. Upon a permanent abandonment of the property of a franchisee in place, the franchisee shall submit to the City Council an instrument to be approved by the City Council transferring to the City ownership of such property.

SECTION 22. CONDITIONS OF STREET OCCUPANCY

A. All transmissions and distribution structures, lines and equipment erected by the franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of said streets, alleys or other public places. The cable communications system shall be constructed and operated in compliance with all adopted local national construction and safety codes.

B. The installation of the cable communications system shall be in accordance with all applicable laws, codes, ordinances, rules and regulations of the Commonwealth of Kentucky and the City affecting electrical installations and buildings, now or hereafter in effect.

C. Except when absolutely necessary to service a subscriber and not simply because it shall be more convenient, economical, or profitable for the franchisee to so operate, and then only when expressly permitted in writing by the City Engineer or the Mayor, under such conditions as he shall prescribe for the public welfare, the franchisee shall not erect or authorize or permit others to erect any poles or other facilities within the streets of the City for conduct of its cable communications system, but shall use the existing poles and other equipment of the appropriate electrical power and telephone or other utility companies under such terms and agreements as the franchisee shall negotiate with these companies. The franchisee shall use its best efforts to insure that the terms and agreements between the franchisee and any utility company are concluded in a reasonable time with no unnecessary delay.

D. Should the franchisee be required to place any lines or other equipment on any boulevard, parkway, or other property under control of the Metropolitan Parks and Recreation Board, the manner of placement and location thereof shall be subject to the control of said Board.

E. The franchisee may trim trees which infringe upon easements, rights-of-way, or streets of the City to prevent the trees from coming in contact with the cable communications system.

F. The franchisee shall at its expense, protect, support temporarily disconnect, relocate or remove any property of the franchisee located on streets, public places, rights-of-way and easements of the City, when required by the City Council because of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by the City or the Commonwealth of Kentucky. If the franchisee fails to do so, the City or the Commonwealth of Kentucky may cause the necessary work to be completed and the franchisee shall pay the cost thereof within ten days of receipt of an itemized account of such cost.

G. Whenever the City or the Commonwealth of Kentucky shall require the relocation or reinstallation of any property of the franchisee in any of the streets or public places of the City, it shall be the obligation of the franchisee upon notice of such requirement to immediately remove and relocate or reinstall said property as may be reasonably necessary at the sole cost of the franchisee.

H. Whenever, in any place within the City, all or any part of the electric or telephone utilities shall be located underground, it shall be the obligation of the franchisee to locate or to cause its property to be located underground within such places. If the electric or telephone utilities shall be located underground, in any place within the City after the franchisee shall have previously installed its property, nevertheless, the franchisee shall, at the same time or immediately thereafter, remove and relocate its property also underground in such places. If the franchisee shall in any case be unable, for operational reasons only, to locate or relocate any part of its property underground, then in that event the City Engineer or the Mayor, upon being satisfied as to the facts thereof and subject to the concurrence of the City Council may permit such property to remain above the ground even though other facilities may be placed underground in the area. However, any such permission shall be upon such conditions as the City Council may require for the public welfare. Any facilities of the franchisee placed underground at the property owner's request, in an area where electric and telephone facilities are aerial, shall be installed with the additional expense paid by the property owner.

K. In the case that the franchisee shall route its cable across any street or thoroughfare, the franchisee shall lay the cable by tunneling under said street or thoroughfare and will not cut the pavement to lay its cable.

I. In the case of disturbance of any street caused by the franchisee, the franchisee shall, at its own cost and expense and in a manner approved by the City Engineer or the Mayor, replace and restore such street, in such a condition as before the work involving such disturbance was done.

J. The franchisee shall upon request temporarily raise or lower its wires to permit the moving of buildings or other things. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same and the franchisee shall have the authority to require such payment in advance. The franchisee shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire changes.

SECTION 23. ARRANGEMENTS BY FRANCHISEE WITH OTHERS

There is hereby granted to the franchisee authority to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and utilities within the City, including, but not limited to, the South Central Bell Telephone Company and Louisville Gas and Electric Company, and in each instance the franchisee shall make its own contractual arrangements with such entity in order to obtain the use of towers, poles, lines, cables and other facilities and shall report their arrangements to the City Engineer or the Mayor.

SECTION 24. REVIEW, RENEWAL, TERMINATION AND CANCELLATION

A. The procedure for renewal or termination of any franchise or Agreement or Ordinance awarding the franchise in accordance herewith shall require public hearings prior to action by the City Council. Hearings in connection with a renewal of a franchise shall take place not less than ninety (90) days prior to the termination of the franchise. The City Council shall after hearing take such action as it deems appropriate, which may include any of the following:

1. The City Council may renew the franchise and Agreement and Ordinance awarding a franchise in accordance herewith upon such conditions as it may direct; or

2. The City Council may authorize the franchisee to transfer the cable communications system to another acceptable franchisee or cable operator; or

3. The City Council may solicit proposals for and execute a new agreement awarding a franchise in accordance with this Ordinance and any amendments hereto; or

4. The City Council may determine not to authorize the award of any further franchise, and thereupon, may direct the franchisee to dismantle its cable communication system.

(a) If the franchisee determines not to renew the agreement awarding a franchise in accordance herewith, the City Council shall proceed to follow one of the courses under subsection B. 2. or 3.

B. Termination -

1. The City Council may terminate any agreement awarding a franchise in accordance herewith in the event of the violation of any provision hereof or of any rule or regulation promulgated pursuant hereto or of any applicable federal, state, or local law, or the breach or other failure, refusal, or neglect by the franchisee to perform its obligations under the terms and conditions of the Ordinance or of any Ordinance or agreement awarding a franchise in accordance herewith, except when such violation, breach, failure, refusal or neglect is caused by any of the following:

(a) act of God or

(b) riot or

(c) an emergency declared by the President of the United States of America, the Governor of the Commonwealth of Kentucky, the County Judge/Executive of Oldham County, Kentucky or the Mayor or

(d) a condition beyond the control of the franchisee.

2. In the event that the City Council determines that the franchisee has violated any provision of this Ordinance, any rule or regulation promulgated pursuant hereto, any applicable federal, state, or local law, or any term of an agreement or ordinance awarding a franchise, except as noted in C. 1., a., b., c., or d., hereof, the City Council shall make a written demand on the franchisee that it comply with the law or said agreement or ordinance. If the violation, breach, failure, refusal or neglect is not remedied to the satisfaction of the City Council, within thirty (30) days following such demand, the City Council shall determine whether or not, in its sole discretion, such violation, breach, failure, refusal, or neglect by the franchisee was excusable or inexcusable as provided in C. L., a., b., c., or d.

(a) If the City Council determines such violation, breach, failure, refusal or neglect by the franchisee was excusable as provided in C. 1., a., b., c., or d., the City Council shall direct the franchisee to correct or remedy the same with such additional time, in such manner and upon such terms and conditions as the City Council may direct.

(b) If the City Council determines such violation, breach, failure, refusal, or neglect by the franchisee was inexcusable as provided in C.1., a., b., c., or d., then the City Council shall declare this Ordinance, the franchise, or the agreement or ordinance awarding a franchise in accordance herewith breached, terminated, and of no further force and effect. This action shall be taken by Ordinance.

(1) Termination shall in no way limit the rights of the City or the franchisee to any remedies legal or equitable, available to the City or franchisee.

3. If the City Council declares the said agreement breached pursuant to C.1., a., b., c., or d., hereof, the City Council may pursue any remedies available to it pursuant to this ordinance or to the said franchise agreement or ordinance or any other remedy, legal or equitable, available to the City Council. In addition, the City Council may take action listed in B. 2., 3., or 4., hereof.

C. In the event that the franchisee dismantles or terminates the cable communications system or is required by any provision of this ordinance to dismantle or terminate the cable communications system, the franchisee shall at the City Council's direction, restore any property public or private, to the condition in which it existed prior to the erection or construction of the system, including any improvements made to such property subsequent to the construction of the system. Restoration of City property, including, but not limited to, streets, shall be in accordance with the directions and specifications of the

City Council and all applicable laws. The franchisee, at the option and direction of the City Council, shall restore the same at its expense.

SECTION 25. REVOCATION OF FRANCHISE

Any franchise issued hereunder may, after hearing be revoked, altered, or suspended by the City Council as it deems necessary on any of the following grounds:

- A. For willful false or misleading statement in, or material omissions from, any application;
- B. For failure to file and maintain the bonds required under this Ordinance;
- C. For repeated failure, as determined by the City Council to maintain signal quality;
- D. For any sale, lease, assignment, or other transfer of its permit without consent of the City Council;
- E. For an inability to provide CATV service to subscribers at the rates authorized by the City Council.
- F. For failure to properly provide service to subscribers or to the City; and
- G. For violation of the terms of its franchise or the Agreement or Ordinance awarding same or of this Ordinance as stated herein. In addition to all other rights and powers reserved or pertaining to the City Council, the City Council reserves as an additional and as a separate and distinct remedy the right to revoke the franchise and all right and privileges of the franchisee thereunder in any of the following events or for any of the following reasons:

1. The franchisee shall by act or omission fail to comply with any term or condition of this Ordinance and shall within thirty (30) days following written demand by the City Council to effect such compliance fail or refuse to do so; or
2. Any provision of this Ordinance shall be finally adjudged by a court of law invalid or unenforceable and the City Council further finds that such provision constitutes at that time a consideration material to the continuance of the franchise herein granted; or
3. The franchisee becomes insolvent; unable, unwilling or fails to pay its debts as such debts become due; or a custodian, receiver, trustee or agent appointed or authorized to do so, is appointed or takes charge of less than substantially all or substantially all of the property of a franchisee for the purpose of enforcing any lien, whether judicial, execution or otherwise; is the subject debtor of an Order for Relief entered by a Bankruptcy Court; or all or part of a franchisee's facilities be sold under an instrument to secure a debt and are not redeemed by franchisee within thirty (30) days from said sale; or
4. The franchisee attempts to or practices any fraud or deceit in its conduct or relations under the franchise.

No such revocation shall be effective unless or until the City Council shall have adopted an Ordinance setting forth the cause and reasons for the revocation and the effective date thereof which Ordinance shall not be adopted without thirty (30) days prior notice thereof to the franchisee and a full opportunity offered to the franchisee to be heard upon the proposed adoption of said Ordinance. The Franchisee shall not be declared in default or be subject to any sanction under any provision of this Contract in any case in which the performance of any such provision is prevented for reasons beyond its control.

SECTION 26. FORECLOSURE - RECEIVERSHIP

- A. Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system, or upon the termination of any lease covering all or a substantial part of the system, the franchisee shall notify the City Council of such fact, and such notification shall be treated as a notification that a change in control of the franchisee has taken place and the provisions of this Ordinance governing the consent of the City Council to such change in control of the franchisee shall apply.
- B. The City Council shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver, or

trustee, to take over and conduct the business of the franchisee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless;

1. Within one hundred twenty (120) days after his election of appointment, such receiver or trustee shall have fully complied with all of the provisions of this Ordinance and the Agreement and Ordinance awarding a franchise hereunder, and remedied all defaults thereunder; and

2. Such receiver or trustee, within said one hundred twenty (120) days shall have executed an agreement, duly approved by the court having jurisdiction over same, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Agreement and Ordinance awarding a franchise hereunder.

SECTION 28. BOOKS AND RECORDS OF THE FRANCHISEE

A. The franchisee shall maintain an office in Jefferson County or Oldham County for so long as it continues to operate the cable communications system or any portion thereof and hereby designates such offices as the place where all notices, directions, orders, and requests may be served or delivered under this Ordinance. The City Council shall be notified of the location of such office or any change thereof.

B. The franchisee shall keep complete and accurate books of account and records of its business and operations in connection with any franchise granted under this Ordinance.

C. The City Council and its representatives shall have access to all books of account and records of the franchisee for the purpose of ascertaining the correctness of any and all reports and may examine its officers and employees in respect thereto.

D. Any false entry in the books of account or records submitted to the City Council and its representatives to a material fact, knowingly made by the franchisee, shall constitute a breach of a material provision of this Ordinance and any franchise Agreement or Ordinance hereunder, for which the remedies provided in this Ordinance may be invoked.

SECTION 28. NEW DEVELOPMENTS

It shall be the policy of the City Council to liberally amend any franchise of its own volition or upon application of a franchisee, after public hearing, when necessary to require or enable a franchisee to take advantage of any developments in the field of transmission of television and radio signals which would afford the franchisee an opportunity to more effectively, efficiently or economically serve its customers so that at all times the cable communications system shall be no less advanced than any other system of comparable size, excepting only systems which are experimental, pilot or demonstration.

SECTION 29. TIME OF ESSENCE

Whenever this Ordinance, or any Ordinance or Agreement awarding a franchise hereunder, shall set forth any time for any act to be performed by or on behalf of a franchisee, such time shall be deemed of the essence, and any failure of a franchisee to perform within the time set forth shall constitute a material breach of the terms of this Ordinance and shall entitle the City Council to invoke all penalties and remedies prescribed in this Ordinance as well as all other legal or equitable remedies available to the City.

SECTION 30. FRANCHISEE NOT TO CONTEST VALIDITY OF FRANCHISE OR ORDINANCE

By acceptance of any franchise hereunder, a franchisee covenants and agrees that it will not at any time or in any manner or proceeding set up any term or condition of this Ordinance or of any Ordinance or Agreement awarding a franchise hereunder as unreasonable, arbitrary, voidable or void, or that the City Council had not the power or authority to make such term or condition, but shall be required to accept the validity of same in their entirety.

SECTION 31. VIOLATIONS

A. It shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in the incorporated areas of the City, any television, radio or non-broadcast signals by means of a cable communications system unless a franchise therefore has first been obtained from the City Council and unless such franchise is in full force and effect.

B. It shall be unlawful for any person to construct, install or maintain within any public street in the incorporated areas of the City, equipment or facilities for distributing any television, radio or non-broadcast signals through a cable communications system, unless a franchise authorizing such use of such street or property or area has first been obtained from the City Council and unless such franchise is in full force and effect.

C. It shall be unlawful for any person, firm or corporation to make any unauthorized connection whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable communications system within the incorporated areas of the City, for the purpose of taking or receiving television signals, radio signals, pictures, programs, sound, or other non-broadcast signals.

D. It shall be unlawful for any person, firm or corporation to make any unauthorized connection whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable communications system within the incorporated areas of the City, for the purpose of enabling himself or others to receive any television signal, radio signal, picture, programs, sound, or other signals without payment to the owner of said system.

E. It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wire or equipment used in any cable communications system.

SECTION 32. PENALTIES

A. Any person violating or failing to comply with any of the provisions of Section 15 or Section 31 of this Ordinance shall be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars (\$50) nor more than two hundred fifty dollars (\$250) or by imprisonment, except that a corporation shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000).

B. Each day that a person violates or fails to comply with the terms of Section 15 or Section 31 shall constitute a separate offense under this Ordinance.

SECTION 33. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid by the FCC, or unconstitutional, illegal or invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration of other obligation required of the franchisee of any franchise granted hereunder.

SECTION 34. REPEAL OF CONFLICTING ORDINANCES

All ordinances or parts of ordinances conflicting with this ordinance are hereby repealed insofar as the same affect this ordinance.

SECTION 35. EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after its passage and publication

PASSED AND APPROVED this 3 day of August, 1982.

Charles D. Barnes
Charles D. Barnes, Mayor

ATTEST:

Shelva D. Barnes
Shelva D. Barnes, Clerk