

## APPENDIX B. FRANCHISES

### ARTICLE 6. TIME WARNER [formerly Telecable of Overland Park, Inc.]

**Section 1. SHORT TITLE.** This ordinance shall be known as "The Cable Television Franchise Ordinance of the City of Leawood, Kansas" and may herein and hereafter be cited as "Leawood Cable TV Franchise Ordinance".

**Section 2. DEFINITIONS.** The following terms, phrases, words and their derivations shall have for the purposes of this ordinance the meanings herein stated; provided that when not inconsistent with the context, words used in the present tense shall include the future, and words in the plural shall include the singular number, and words in the singular number shall include the plural number; provided further that the word "shall" is to be construed as mandatory and not simply directive; provided further that the following definitions shall herein apply:

- (a) "*City*" shall mean the City of Leawood, Kansas, a municipal corporation, or its successors, and shall include when appropriate to the use of the term in context, the territorial boundaries of said City as now constituted or as shall hereafter exist;
- (b) "*Governing Body*" shall mean the present legislative body of the City of Leawood, Kansas, or any successor to the legislative powers of said present Governing Body;
- (c) "*Franchise*" means this agreement.
- (d) "*Franchisee*" shall mean TeleCable of Overland Park, Inc., or its successors, transferees or assigns, which is granted the franchise, the terms and conditions of which are provided herein;
- (e) "*Street*" shall mean any public street, roadway, highway, alley, or other public right-of-way now or hereafter subject to the jurisdiction and regulation of the City as provided by the laws of the State of Kansas and any subsequent amendments thereof;
- (f) "*System*" or "*Cable Communications System*" or "*Cable Television System*" shall mean a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals, located in the City. Said definition shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way.
- (g) "*Subscriber*" shall mean any person which receives from the franchisee herein named the services of said franchisee's cable television system;
- (h) "*Person*" shall mean any individual or association of individuals, or any firm, corporation, or other business organization;

- (i) "*Gross annual subscriber revenues*" shall mean any and all compensation and other consideration derived directly by franchisee from subscribers within said City for regularly furnished cable television service. Gross annual subscriber revenue shall include revenues derived from cable service, pay television service, installation, rental of television converters or other equipment, per-program and per-channel charges, or advertising revenues, but shall not include any taxes on services furnished by franchisee or imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the franchisee for such governmental unit.

In the event the franchisee shall receive any revenue from any advertisements disseminated to subscribers in Johnson County, Kansas, both within and without the City, gross annual subscriber revenues shall, with respect to such advertisements, include an amount derived by multiplying such advertising revenue by a fraction, the numerator of which is the number of subscribers in the City reached by such advertisement and the denominator of which is the total number of subscribers reached by such advertisement.

**Section 3. GRANT OF NON-EXCLUSIVE FRANCHISE.** The City of Leawood, Kansas hereby grants unto the franchisee herein named a non-exclusive franchise to construct, erect, operate and maintain a cable television system within said City, and in so doing to use the streets of said City by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining, and retaining in, on, under, upon, or across any such streets, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to a cable television system, and in addition, so to use, operate and provide for all or part of such facilities by service offerings obtained from any franchised or operating utility company providing service within said City.

The authority hereby granted to conduct a cable television system within said City, and to use and occupy the streets thereof does not and shall not be deemed an exclusive right or permission, and said City expressly reserves the right to grant other non-exclusive franchises to persons, firms, corporations or other business organizations, to construct, operate, and maintain other cable television systems within said City; but no such additional franchises shall in any way affect the rights or obligations of the franchisee herein named and set forth in this ordinance.

The rights herein granted to franchisee herein named shall extend to any area hereafter annexed to the City and franchisee shall be bound by the same rules and regulations as to such area as are otherwise herein or hereafter provided.

- Section 4. PROGRAM ORIGINATION.** The franchisee herein named shall transmit and distribute to its subscribers such electromagnetic radiation as are now, and may hereafter, be authorized by the Federal Communications Commission or any other administrative agency of the United States, the several states, or political subdivisions thereof having jurisdiction to regulate such activity; provided that the franchisee may originate and distribute public service information regarding the weather, time, news of events that have or will occur within the franchisee's subscribers' service area, including such local community events that may be made available to its subscribers.
- Section 5. TERM OF FRANCHISE.** This franchise ordinance extends and renews the existing franchise for a period of twenty (20) years and the term of the renewal franchise herein granted shall commence upon expiration of the existing franchise and shall continue for a term of twenty(20) years from said date; provided that said franchisee's acceptance of this renewal franchise shall be filed in the office of the City Clerk of said City within thirty (30) days from the effective date of this ordinance; provided further that franchisee's failure to timely file said acceptance as herein provided shall cause the City's offer of franchise contained herein to be deemed revoked and without force and effect, whereupon this ordinance shall be deemed void and of no further force and effect.
- Section 6. FRANCHISE PAYMENTS.** The franchisee herein named shall pay to the City during the term of said franchise a sum equal to five (5) percent of the gross annual subscriber revenues, or the maximum cable television franchise fee permitted by federal law, whichever is less; provided that payment of said sum will be made quarterly in the months of January, April, July and October.
- Section 7. AUDIT AND REPORTING.** Within thirty (30) days after the expiration of the first twelve (12) months of this franchise and within thirty (30) days after each succeeding twelve (12) month period during the balance of the term that this franchise shall be in force, the franchisee named herein shall file in the office of the City Clerk of said City, a financial statement prepared by a certified public accountant or person otherwise satisfactory to said City, showing the gross annual subscriber revenues of said franchisee during the preceding twelve (12) months, said receipts to be determined as defined herein; provided that in the events said franchise is terminated or forfeited prior to the end of the twenty (20) year term herein provided, the franchisee shall immediately submit to the office of the City Clerk of said City a financial statement of said franchisee for the period that has elapsed since the end of the period covered by the last such financial statement; provided further that within thirty (30) days following the termination or forfeiture of said franchise, said franchisee will pay said City a sum equal to the percentage of said gross annual subscriber revenues as have accrued to said franchisee for the aforementioned period; provided further that said City reserves the right to independently audit said franchisee's gross annual subscriber revenues from which its franchise payments are computed, and any discrepancy between said audit and that filed by the franchisee with the City Clerk of said City which results in the City's receiving a lesser sum than that which is due and owing from said franchisee will be determined and paid forthwith to said City; provided further that the City's acceptance of any payment determined as herein

before provided to be deficient shall not be construed as a release of liability from said City or an accord and satisfaction of any claim said City may have for additional sums owed by said franchisee as herein before provided.

**Section 8. SUBSCRIBER RATES.** Rates for subscriber service shall be determined by franchisee and shall be uniform throughout the City for each type of service. Franchisee shall file with the City Clerk a schedule of current rates in effect.

Subscriber rates for installation shall be determined by franchisee and shall be uniform, except where extraordinary installation procedures are required in order to establish service, in which case franchisee may charge the subscriber the actual cost of materials and labor plus ten (10) per cent.

Where a subscriber's service is disconnected for nonpayment of monies due, franchisee is authorized to collect a reconnection fee.

**Section 9. FRANCHISEE'S OPERATING REGULATIONS.** The franchisee herein named shall have the authority to promulgate such rules, regulations and conditions governing the conduct of its business as shall be reasonably necessary to enable the franchisee to exercise its rights and to perform its obligations under this franchise ordinance and to assure an uninterrupted service to its subscribers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this franchise ordinance.

With respect to extension of service to new areas within the City, the franchisee shall file in the office of the City Clerk of said City the rules and regulations governing the franchisee's extension of service to such new areas; provided that if the Governing Body has not filed with said franchisee its written objection to any or all of said rules and regulations within thirty (30) days after they are filed by franchisee, said rules and regulations shall be deemed approved. Franchisee may thereafter change such rules and regulations by filing such changes as herein before provided, and the same shall be approved or rejected in like manner. In the event the Governing Body rejects the rules or any proposed change thereof, franchisee shall be entitled to a hearing before the Governing Body for consideration of the rules or changes within ten (10) days following the Governing Body's rejection of the same by a resolution adopted at a regular meeting of the Governing Body.

- Section 10. NOTICE TO PARTIES.** Whenever, under the terms of this franchise ordinance, either party hereto shall be required or permitted to give notice to the other, such notice shall be in writing, and if to be served upon the City, it shall be delivered either by first class United States mail addressed to the office of the City Clerk of said City or by personal delivery of the same to said person, or his duly authorized agent for receiving the same, and if said notice be addressed to said franchisee, the same shall be delivered by either first class United States mail addressed to an officer or the resident agent of said franchisee at the registered office of said franchisee or its resident agent, or by personally delivering the same to such person as herein before provided, or such other person as said franchisee shall from time to time direct.
- Section 11. NOTICE OF FRANCHISEE'S FILINGS WITH REGULATORY AGENCIES.** The franchisee is hereby required to file in the office of the City Clerk of said City copies of any and all petitions, applications, and communications submitted or filed by said franchisee with the Federal Communications Commission, the Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter effecting the operation of a cable television system, so far as the same effects or will effect said franchisee's service or operation within said City.
- Section 12. FRANCHISEE'S DUTY TO COMPLY WITH STATE AND FEDERAL LAW.** Notwithstanding any other provisions of this franchise ordinance to the contrary, the franchisee shall at all times comply with all laws and regulations of the United States and the several states and any political subdivision thereof, or any administrative agency thereof, having jurisdiction to regulate cable television systems; provided that franchisee's failure to comply with any law or regulation governing the operation of said cable television system may result in a forfeiture of the privileges conferred by the franchise ordinance when so determined by the Governing Body of said City as adopted by ordinance at one of its regular meetings.
- Section 13. LOCATION OF FRANCHISEE'S PROPERTIES IN THE PUBLIC WAY.** The franchisee in the construction of any facilities to provide service to its subscribers shall use the existing poles and other properties of franchised public utility companies operating within the City, and said franchisee shall not construct, erect, or maintain any supporting poles or other properties within the public streets of said City for the permanent operation of its cable television system except upon the express consent and permission of said City given in writing; provided that said franchisee shall not be prohibited from relocating its facilities if the poles and other properties on or upon which said facilities attach and are affixed are relocated by the owners of said properties, nor shall the franchisee be prohibited from constructing, operating, and maintaining its facilities upon other poles and properties of said franchised public utility companies as may hereinafter be constructed, so long as such construction, operation, and maintenance is in compliance with said City's existing ordinances pertaining to construction of new utility and communications lines; provided further that, wherever within the City all or any part of the properties of the franchised public utility company with which said franchisee named herein has contracted for the

use of said facilities, shall be located underground, it shall be the obligation of said franchisee to construct, operate, and maintain its properties within and under such locations; provided further that if existing properties of the franchised public utility companies with which said franchisee herein named has contracted, relocate said properties underground, said franchisee shall forthwith relocate its properties, formerly attached thereto, underground in such places; however, the City reserves the right to permit said franchisee to maintain its existing facilities aboveground in said locations when the City shall so direct the same in writing to said franchisee.

**Section 14. RELOCATION OF FRANCHISEE'S PROPERTY.** Whenever the City or a franchised public utility company operating within said City shall request of the franchisee the relocation or reinstallation of any of its properties along and within any of the streets of said City, said franchisee shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet said request and the cost of such relocation, removal, or reinstallation of said properties shall be the exclusive obligation of said franchisee; provided that said franchisee shall upon request of any person holding a validly issued building or moving permit of said City, said request having been given in writing to said franchisee not less than forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, said franchisee shall thereupon temporarily raise, lower, or relocate its wires or other property as may be required for said person to exercise the rights of its permit, and said franchisee may require said person to make payment in advance for any expenses incurred by said franchisee pursuant to said person's request.

**Section 15. FRANCHISEE'S DUTY TO REMOVE ITS PROPERTIES FROM THE PUBLIC WAY.** Franchisee shall promptly remove from the public streets and other public ways where its properties are located, all or any part of its facilities so located, when franchisee ceases to use any part, or all, of its cable television system for a continuous period of twelve months or when said franchise is terminated or revoked pursuant to notice as provided elsewhere in this ordinance.

Provided that said franchisee shall be entitled to receive notice in writing from said City setting forth one or more of the occurrences herein above enumerated, or such other occurrence herein before or hereinafter provided, and that said franchisee shall have ninety (90) days from the date upon which said notice is received to remove said properties as herein above required.

**Section 16. AUTHORITY OF CITY TO REQUIRE REMOVAL OF FRANCHISEE'S PROPERTIES FROM THE PUBLIC WAY.** The City is hereby authorized to enforce the provisions of Section 15 of this franchise ordinance as hereinafter provided;

- (a) That said City shall notify said franchisee in writing of any occurrence provided for in Section 15 hereof, for which said franchise may be terminated, forfeited, revoked, or declared void by said City, and that within 90 days following receipt of said notice, said franchisee shall remove from the public streets and all other public ways of said City upon, over, and under which its properties are located, those portions of the properties which are attached to utility poles and those portions of buried properties which come above ground in closures and pedestals, unless otherwise authorized and permitted by said City. Franchisee shall not be required in any instance to remove buried cables.
- (b) Said City may declare abandoned any property of said franchisee remaining in place ninety (90) days after notification as herein above provided, and the same shall be considered permanently abandoned property unless said City extends the time for removal for a period not to exceed an additional thirty (30) days.

**Section 17. PROPERTY ABANDONED BY THE FRANCHISEE.** Any property abandoned by said franchisee as herein above or hereinafter provided shall become the property of the City and said franchisee agrees to execute and deliver an instrument in writing, transferring its ownership interest in any such property to said City; provided that any notice given by the City as provided in Section 16 hereof, shall be deemed notice to any other persons claiming interest in said property of the franchisee, and said persons shall be subject to all the provisions herein before provided in Sections 15 and 16 hereof.

**Section 18. STANDARDS FOR CONSTRUCTION OF FRANCHISEE'S FACILITIES.** The construction, operation, and maintenance of the properties and facilities of said franchisee's cable television system shall be in accord with good engineering practices and shall be in compliance with the National Electric Code and applicable laws, regulations and ordinances as such are from time to time amended and revised by the United States of America and the several states and any political subdivisions thereof or any administrative agency thereof having jurisdiction to regulate the construction of cable television systems. 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, easements and swales, sidewalks, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, easements and swales, sidewalks, alleys or other public ways and places. The franchisee shall have the authority to trim trees which are located upon and overhang the public streets and other public ways of said City, so as to prevent the branches of such trees from coming into contact with the franchisee's properties.

The franchisee shall not construct or reconstruct any of its cable TV system located upon, over, under or within the public streets or public ways of said City without first having submitted in writing a description of its planned improvement to the Director of Public Works of said City and having received a permit for such improvement from said Director.

**Section 19. STANDARDS FOR OPERATING AND MAINTAINING FRANCHISEE'S CABLE TELEVISION SYSTEM.** Franchisee's cable television system shall be constructed, operated, and maintained in accordance with the highest accepted standards of the cable television industry to ensure that the subscriber receives the highest quality of service; provided that the following enumerated criteria may be considered in determining franchisee's satisfactory compliance with the provisions of this section:

- (1) That the system is installed and remains capable of using all-band equipment and of passing the entire VHF television and FM radio spectrum and that it shall have the further capability of converting UHF for the distribution to subscribers on the VHF band; and
- (2) That the system is capable of transmitting and passing the standard color television signals without the introduction of material degradation on color fidelity and intelligence; and
- (3) That the system is designed and rated for 24-hour a day continuous operation; and
- (4) That the system provides a nominal signal level of 1,000 microvolts at the input terminals of each television receiver of any subscriber; and
- (5) That the system signal to noise ratio is not less than 30 decibels; and
- (6) That hum modulation of the picture signal is less than 5 per cent at the subscriber's receiver; and
- (7) That the system uses components having a voltage standing wave ratio (VSWR) of 1.4 or less; and
- (8) That the system will and does produce a picture upon any subscriber's television screen in black and white or color (provided the subscriber's set is capable of producing a color picture) that is undistorted and free from ghost images and accompanied by proper sound, assuming standard production television sets in good repair, and in any event, the picture shall be as good as the state of the art allows; and
- (9) That the system transmits or distributes signals of adequate strength to produce good pictures with good sound at all television receivers of all subscribers, without causing cross-modulation in the cables or interfering with other electromagnetic radiation or the reception of other television or radio receivers in the area not connected to the system.

The franchisee agrees that the cable television system to be operated pursuant to this franchise shall be upgraded in terms of its channel capacity and shall no later than December 31, 1991, be capable of technical transmission of a minimum of fifty-four (54) standard television channels to subscribers.

The franchisee will limit system failures to a minimum by locating and correcting malfunctions promptly but in no event longer than 24 hours after notice has been given, except said time shall be extended during such time as performance of this obligation is prevented by an act of God or the same is otherwise made impossible because of circumstances over which the franchisee has no control; provided further that the franchisee will maintain and provide to its subscribers an office near the City, which shall be available to said subscribers during normal business hours of every day Monday through Friday inclusive, for the purpose of receiving complaints or requests for repairs, adjustments, or other service caused by some failure or malfunction of the system, and that said franchisee shall provide its subscribers with facilities for receiving requests and complaints for service at a time other than that herein provided.

Should franchisee find equipment or devices have been connected to franchisee's cable television system by any persons and that said equipment or devices are causing interference to the system or degradation of the quality of transmission received by subscribers, or impairing franchisee's ability to comply with any laws and regulations governing cable television transmissions, franchisee is hereby empowered immediately to disconnect said equipment or devices from the cable television system.

**Section 20. RIGHTS RESERVED TO THE CITY.** Without limitation upon the rights which the City might otherwise have, said City does hereby expressly reserve the following rights, powers and authorities:

- (a) The right to exercise the governmental powers, now or hereafter, vested in or granted to said City;
- (b) The right to grant additional cable television franchises within said City subject to the provisions of Section 3 hereof.

The City's failure to enforce and remedy any noncompliance by the franchisee of the terms and conditions of this franchise ordinance shall not constitute a waiver of said City's rights hereunder, and said franchisee shall continue to perform its obligations as herein provided.

**Section 21. CONDITIONS FOR FORFEITURE OF FRANCHISE.** In addition to all other rights and powers herein reserved or otherwise enjoyed by the City, said City reserves as an additional and separate remedy the right to revoke the franchise herein granted and all rights and privileges of said franchisee conferred hereunder, upon the occurrence of any of the following events:

- (a) That franchisee fails to remedy within thirty (30) days following the date upon which written notice is received of said franchisee's failure to comply with the provisions of this franchise ordinance whether the same be committed by act or omissions, the violation set forth in said notice; or

- (b) That any provisions of this franchise ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body of said City to constitute such a material consideration for the granting of said franchise as to cause the same to become null and void; or
- (c) Franchisee is adjudged a bankrupt, becomes insolvent, suffers a transfer of its properties pursuant to an action of its creditors upon an instrument or judicial declaration securing said creditor's interest in said properties, and thereafter the same be not redeemed by said franchisee within thirty (30) days from the date of said transfer, or said franchisee is otherwise unable or unwilling to pay its debts and obligations as the same accrue; or
- (d) The franchisee commits an act of fraud or deceit against said City in obtaining the grant of the franchise herein conferred, or upon being granted said franchisee commits such an act against said City; or
- (e) Franchisee shall give to any person, firm, corporation or other business association, preference or advantage over some other person in assessing and levying its rates and charges, or in serving its subscribers, or in enforcing its rules and regulations, or in any other respect; provided that no revocation shall be effective unless, or until, the Governing Body of said City shall find at one of its regular meetings or such other special meeting as may be required, that a violation of the terms and conditions of said franchise ordinance as herein set forth, was committed or occurred by said franchisee; provided further that the revocation and repeal of this franchise ordinance shall become effective only upon the enactment of an ordinance by said Governing Body of said City adopted not sooner than a date thirty (30) days following the date upon which said franchisee is notified of any alleged act or commission for which said franchise may be revoked, as herein provided.

Provided further that any allegation of violation of subparagraph (E) herein above by franchisee shall be given to franchisee in writing and that franchisee shall have a period of thirty (30) days in which to correct said allegation or provide sufficient information to said City so City could determine that no such violation in fact occurred, before City may proceed with the franchise revocation process provided herein.

Provided further that nothing herein contained in this section shall be construed to prevent the franchisee from offering its subscribers occasional temporary discounts and promotions for the purpose of attracting subscribers or persuading existing subscribers to order additional optional services, nor shall franchisee be prohibited by this section from offering discounts on its service to cable television employees.

**Section 22. SERVICE TO SCHOOLS AND OTHER PUBLIC FACILITIES.**

- (a) Upon the request of any private, parochial or public elementary or secondary school or any college or university located in the City, said franchisee shall furnish a single service drop to such institution free of installation charge and monthly service charge for basic cable television services, except where the installation of said service drop involves extraordinary expense related to the difficulty of installation, in which case franchisee is authorized to charge such school, college or university those portions of the installation expense beyond the normal and routine.
- (b)
  - (1) Franchisee shall provide the public school districts located within the corporate limits of said City a channel, to be used jointly by such districts, upon which the districts may receive or transmit electromagnetic radiation, and
  - (2) Franchisee shall provide said City with a channel to be used jointly with other franchising authorities served by franchisee from its common head end, for receiving or transmitting electromagnetic radiation.

Should said City or any other franchise authority within Johnson County, Kansas, served by franchisee from a common head end site desire a second such governmental channel for joint use by the franchising authorities, franchisee agrees to provide said channel no later than December 31, 1991, provided however that such second governmental channel's frequency may be specified by the franchisee and is not required to be in that portion of the VHF television spectrum commonly known as channels two (2) through thirteen (13).

**Section 23. EMERGENCY USE OF FRANCHISEE'S SYSTEM.** In the event of a civil disaster or other emergency which occurs within said City, the franchisee shall upon request of the Mayor or designated representative, permit said City to transmit information over the cable television system advising the subscribers regarding the nature and extent of the disaster or emergency as may be required to protect said persons for their safety and welfare; provided that any such transmission shall be conducted by or with the assistance of franchisee's authorized personnel.

**Section 24. FRANCHISEE'S DUTY TO SECURE LIABILITY INSURANCE.** Franchisee shall concurrently with the filing of its acceptance of the franchise herein granted, file with the City Clerk of said City evidence that said franchisee has contracted for, and has, liability insurance to protect the following enumerated risks in the sums hereinafter set forth:

That said franchisee shall further provide evidence of its having insured said City and its officers, boards, commissions, agents, and employees from and against all claims by any person whatsoever for loss or damage from personal injury, death, or property damage occasioned by the operation of said franchisee's cable television system, or alleged to so have been caused or occurred, for an amount not less than \$500,000 for the personal injury or death to any one person and \$5,000,000 for personal injury or death of two or more persons in any one occurrence, and \$300,000 for damages to property resulting from any one occurrence.

**Section 25. FRANCHISEE'S PERFORMANCE BOND.** The franchisee shall at all times during the term of this franchise maintain in full force and effect, at franchisee's sole and exclusive expense, a corporate surety bond in a company, and in a form approved by the City Attorney of said City, in an amount not less than \$50,000 renewable annually, and conditioned upon franchisee's faithful performance of the provisions, terms, and conditions of the franchise herein granted and conferred by this franchise ordinance; provided that in the event said City shall exercise its right to revoke the franchise of the franchisee as provided in Section 21 herein, then the City shall be entitled to recover under the terms of said bond the full amount of any loss occasioned said City by such act or occurrence as enumerated in Section 21 hereof.

**Section 26. FRANCHISEE IS WITHOUT REMEDY AGAINST THE CITY.** The franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this franchise ordinance, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the franchise herein granted; provided that said franchisee expressly acknowledges that it accepted the franchise herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to grant the franchise herein conferred upon said franchisee; provided further that the franchisee acknowledges by its acceptance of said franchise that it has not been induced to enter into this franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of this franchise not expressed herein; provided further that the franchisee acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

**Section 27. LIMITATION UPON FRANCHISEE'S RIGHT TO TRANSFER THIS FRANCHISE.** The franchisee shall not sell or transfer its plant or cable television system or any portion thereof, nor any right, title or interest in the same, nor shall the franchisee transfer any rights under this franchise to any other person without prior approval of the Governing Body of said City, as expressed by resolution adopted at one of its regular or special meetings; provided further that such approval shall not be unreasonably withheld.

**Section 28. CITY'S RIGHT TO EQUAL TREATMENT.** In the event the franchisee is granted a cable television system franchise in any other political subdivision within Johnson County, Kansas, and the provisions of such franchise are more favorable to such political subdivision and the residents thereof than the provisions of the franchise hereby granted, then the City shall have the right to request franchisee to modify and amend the provisions of the franchise hereby granted to conform to any such more favorable provisions contained in the franchise of another political subdivision of Johnson County, Kansas; provided that said franchisee may offer to the City evidence and statements distinguishing any such other franchise from the franchise hereby granted, or evidence of the existence of state or federal laws or rules preventing the franchisee from making the change requested by the City; provided further that, in the event the City shall request franchisee to amend and modify said franchise in the manner herein above provided and the City determines that said franchisee has not offered sufficient evidence and statements to justify its not conforming to said City's request, then, and in that event, either the City or said franchisee may refer the City's request for arbitration as provided in the laws of the State of Kansas then existing and the decision of the arbitrator shall be binding and conclusory upon said parties, except that the arbitrator may not compel franchisee to be in non-compliance with any state or federal law or rules which take precedence over this ordinance; provided further that in the event the City's request is submitted for arbitration, the arbitrator may not consider, nor shall he effect, the then existing provisions of this franchise except as herein provided.

**Section 29. FRANCHISEE'S DUTY TO INDEMNIFY THE CITY.** At the time the franchisee files its acceptance of this franchise, franchisee thereby agrees to indemnify the City against any and all claims, demands, actions, suits and proceedings by other persons against any and all liability to such other persons by reason of liability for damages arising out of any failure by said franchisee to obtain consent from owner, authorized distributors and licensees of programs transmitted or distributed by the franchisee under its cable television system and against any loss, cost, expense or damages resulting therefrom and including reasonable attorneys fees incurred in the defense of any such action.

**Section 30. NEW DEVELOPMENTS.** It shall be the policy of the City to amend reasonably this franchise ordinance upon application of franchisee when necessary to enable franchisee to take advantage of any developments in the field of transmission of television, radio signals, cable television or other forms of electromagnetic radiation.

**Section 31. RIGHTS OF INDIVIDUALS.**

- (a) Franchisee shall not deny service or otherwise discriminate against subscribers or general citizens on the basis of race, color, religion, national origin, or sex. Franchisee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.

- (b) Franchisee shall adhere to the equal employment opportunity requirements of federal, state and local regulations as now existing and as amended from time to time.
- (c) Franchisee shall not transmit any signals from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. Any such authorization shall be revocable by the subscriber with no penalty. Provided, however, that the franchisee shall be entitled to conduct system wide or individually addressed electronic checks for the purpose of verifying system integrity, controlling two-way return path transmission, or billing for per-channel, per-event or other special services.

**Section 32. SEVERABILITY.** That should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be thereby affected.

**Section 33. TIME IS OF THE ESSENCE.** Whenever this franchise shall set forth any time for any action to be performed by or on behalf of the franchisee, such time shall be deemed of the essence and any failure of the franchisee to perform within the time so specified shall be sufficient grounds for said City to revoke the franchise herein granted, subject to procedural requirements stated herein.

(Ord. No. 988; Effective 09-06-87)