

CHAPTER 9

CABLE TELEVISION

9-1-1 **TITLE.** This Chapter shall be known and may be cited as Cable TV Franchise.

9-1-2 **PREAMBLE.** This Chapter was passed after a full, open and public hearing upon prior notice and opportunity of all interested parties to be heard and upon careful consideration of Cass Cable TV, Inc.'s qualifications; including its legal, character, financial and technical qualifications, and the adequacy and feasibility of its construction arrangements.

9-1-3 **DEFINITIONS.** For the purpose of this Chapter, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word "**shall**" is always mandatory. The captions have no force of law, are not part of the section, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below:

(A) **"City"** is the City of Mt. Sterling, a municipal corporation under the laws of the State of Illinois.

(B) **"Grantee"** is Cass Cable TV, Inc. a corporation organized and existing under the laws of the State of Illinois, and it is the grantee of rights under this franchise.

(C) **"City Council"** is the City Council of the City of Mt. Sterling or its designated representative.

(D) **"Federal Communications Commission"** or **"FCC"** is the present Federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

(E) **"Person"** is any individual, firm, partnership, association, corporation, company or organization of any kind.

(F) **"Gross Subscriber Revenues"** shall include any and all compensation or receipts derived by Grantee from installation, disconnection and re-installation charges and periodic service charges in connection with the carriage of broadcast signals and Federal Communications Commission mandated non-broadcast services within the City, but shall not include any refunds or credits made to subscribers or any taxes imposed on the services furnished by Grantee. Nor shall it include revenue from "ancillary" or "auxiliary" services, which include, but are not limited to, advertising, leased channels, and programming supplied on a per program or per channel charge basis, if any.

(G) **“Regular Subscriber Services”** shall include the carriage of broadcast signals and FCC mandated non-broadcast services, but shall not include “ancillary” or “auxiliary” services, which include, but are not limited to, advertising, leased channels, and programming supplied on a per program or per channel charge basis, if any.

9-1-4 GRANT OF AUTHORITY. There is hereby granted by the City to Grantee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over or under the streets, alleys, easements, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the City of a cable television system for the transmission of television signals and other signals either separately or upon or in conjunction with any public utility maintaining the same in the City with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, easements and public ground and places in the City to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to a cable television, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. The rights herein granted for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, easements, public ways and places to any person at any time during the period of this franchise; provided that nothing contained herein shall be deemed to require the granting of additional CATV franchises if, in the opinion of the City Council, it is in the public interest to restrict such franchises to one or more.

9-1-5 POLICE POWER. Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State of Illinois, the laws of the United States of America, or the rules of the Federal Communications Commission.

9-1-6 **INDEMNIFICATION.** Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever against the City resulting from negligence on the part of Grantee in the construction, operation, or maintenance of its cable television system in the City; and for this purpose, Grantee shall carry property damage and personal injury insurance with some responsible insurance company or companies qualified to do business in the State of Illinois. The amounts of such insurance to be carried for liability due to property damage shall be **One Hundred Thousand Dollars (\$100,000.00)** as to any one occurrence; and against liability due to injury to or death of persons, **Three Hundred Thousand Dollars (\$300,000.00)** as to any one person and **Twenty-Five Thousand Dollars (\$25,000.00)** as to any one occurrence. The City shall notify Grantee, in writing, after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of Grantee. Where any such claim or demand against the City is made by suit or other legal action, written notice thereof shall be given by the City to Grantee. Failure by the City to properly notify Grantee in accordance with the foregoing of any such claim suit, or demand against the City shall release Grantee from its obligation to indemnify the City as provided herein.

9-1-7 **COMPLAINT PROCEDURE.** Grantee shall maintain a business office or a toll-free telephone listing in the City for the purpose of receiving inquiries and complaints from its customers and the general public. Grantee shall investigate all complaints within **five (5) days** of their receipt and shall in good faith attempt to resolve them swiftly and equitably. The following City official shall be responsible for receiving and acting upon any unresolved complaints: Mayor. Written notice of this complaint procedure, including the identity of the City official responsible for receiving unresolved complaints, shall be given to each subscriber at the time of initial subscription to the cable system.

9-1-8 **CONSTRUCTION AND MAINTENANCE.**
(A) All structure, lines and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, easements, and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of the City now or hereafter in force. Existing poles, posts, conduits and other such structures of any electric power system, telephone company or other public utility located in the City shall be made available to Grantee for leasing or licensing upon reasonable terms and rates and shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. The City shall actively assist Grantee to the fullest extent necessary in obtaining reasonable joint pole or conduit use agreements from the owner as existing poles or conduits.

(B) In case of any disturbance by Grantee of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition as before said work was commenced.

(C) In the event that at any time during the period of this franchise the City shall lawfully elect or alter or change any street, alley, easement, or other public way requiring the relocation of Grantee's facilities, then in such event Grantee, upon reasonable notice by the City, shall remove, relay and relocate the same at its own expense; provided, however, that where public funds are available for such relocation pursuant to law, Grantee shall not be required to pay the cost.

(D) Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance.

(E) Grantee shall have the authority to trim trees upon and overhanging all streets, alleys, easements, sidewalks, and public places of the City so as to prevent the branches of such trees from coming into contact with Grantee's facilities.

(F) All poles, lines, structures and other facilities of Grantee in, or over and under the streets, sidewalks, alleys, easements and public grounds or places of the City shall be kept by Grantee at all times in a safe and substantial condition.

(G) Should any construction be necessary for Grantee to provide the cable television service authorized by this franchise, a significant portion of such construction (at least **twenty percent (20%)**) shall be accomplished within **one (1) year** after the effective date of this Code, or if FCC certification is required prior to implementation of the cable television service authorized by this franchise, within **one (1) year** after the effective date of the grant by the FCC of the necessary certification. Thereafter, Grantee shall equitably and reasonably proceed to complete the necessary construction at a rate of not less than **twenty-one percent (21%)** per year of the total construction authorized by this franchise.

9-1-9 **PAYMENTS TO THE CITY.** The Company shall, during each year of operation under this franchise, pay to the City, **three percent (3%)** of the annual gross subscriber revenues excluding pay TV service charges received by the Company for cable television services rendered to customers located within the City. At the time of this annual payment, the Company shall furnish the City with an annual report showing the Company's annual gross subscriber revenues during the preceding year and such other information as the City shall reasonably request with respect to properties and expenses related to the Company's services within the City for such period.

9-1-10 **FCC RULES APPLICABLE.** This franchise is governed by and subject to all applicable rules and regulations of the Federal Communications Commission, specifically including Part 76, and by the laws of the State of Illinois. Should there be any modifications of the provisions of Section 76.31 of the Rules and Regulations of the Federal Communications Commission which must be incorporated into this franchise, the City and Grantee agree that such incorporation shall be accomplished within **one (1) year** after the effective date of the FCC's adoption of the modification or upon renewal of this franchise, whichever occurs first.

9-1-11 **FRANCHISE TERM.** This franchise shall take effect and be in full force from and after acceptance by Grantee as provided in **Section 9-1-17**, and the same shall continue in full force and effect for a term of **fifteen (15) years**; provided, however, that should FCC certification be necessary prior to implementation of the cable television service contemplated under this franchise, then the term shall begin upon the effective date of the grant by the FCC of the necessary certification.

9-1-12 **RENEWAL PROCEDURE.** Grantee shall have the option to request renewal of this franchise for an additional period not to exceed **fifteen (15) years**. Should Grantee desire to exercise this option, it shall so notify the City, in writing, not less than **three (3) months** prior to expiration of this franchise. Upon exercise of this option by Grantee, the City shall conduct a full, open, and public renewal proceeding upon prior notice and opportunity of all interested parties to be heard. The renewal proceeding shall be held for the purpose of considering Grantee's performance under this franchise. Renewal shall not be unreasonably denied and shall be granted unless Grantee is found to be unqualified to continue operation of this cable television system. If this franchise is renewed by the City, all of the terms and provisions contained herein shall be controlling during the renewal period, except to the extent that said terms and provisions are modified by the City, or unless this franchise is superceded by a new franchise. Should the City, for any reason, be unable to complete the renewal proceeding prior to expiration of this franchise, Grantee shall have the right to continue operation of this cable television system pursuant to the terms of this franchise until such time as the renewal proceeding is concluded. Should the City deny renewal of this franchise, such denial shall be accompanied by a written statement setting forth the reasons for the denial. Grantee shall have the right to request review of any such denial by any court of competent jurisdiction. Furthermore, in the event that the City denies renewal, Grantee shall be afforded a period of **six (6) months** following denial within which to sell, transfer, or convey this cable television system to a qualified purchaser at fair market

value. During this **six (6) month** period, which shall run from the effective date of the final order or decision denying renewal, including any appeal, Grantee shall have the right to operate this cable television system pursuant to franchise.

9-1-13 **FORFEITURE.** If Grantee should violate any of the terms, conditions or provisions of this franchise or if Grantee should fail to comply with any reasonable provisions of any ordinance of the City regulating the use by Grantee of the streets, alleys, easements or public ways of the City, and should Grantee further continue to violate or fail to comply with the same for a period of **thirty (30) days** after Grantee shall have been notified in writing by the City to cease and desist from any such violation or failure to comply so specified, then Grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this franchise; provided that such forfeiture shall be declared only by written decision of the City Council after an appropriate public proceeding before the City Council affording Grantee due process and full opportunity to be heard and to respond to any such notice of violation or failure to comply; and provided further that the City Council may, in its discretion and upon a finding of violation or failure to comply, impose a letter penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by Grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to comply and any resultant penalty to any court of competent jurisdiction. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of **six (6) months** within which to sell, transfer, or convey this cable television system to a qualified purchaser at fair market value. During this **six (6) month** period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the provisions of this franchise.

9-1-14 **SURRENDER RIGHT.** Grantee may surrender this franchise at any time upon filing with the City Clerk of the City a written notice of its intention to do so at least **three (3) months** before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of Grantee in connection with this franchise shall terminate.

9-1-15 **TRANSFERS.** All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to be binding upon the successors of the City and successors and assigns of Grantee; and the same shall not be

assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment of the franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least **fifty percent (50%)** of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior approval of the City Council.

9-1-16 **RECEIVER SALES PROHIBITED.** As a condition of this franchise, Grantee agrees that it shall not engage in the business of sales or repair of television receivers owned by its subscribers; nor shall it be responsible for the operating condition of said receivers; provided, however, that this paragraph shall not apply to converters, decoders, home interactive terminals and other such devices as may be used in furnishing any programming or service via Grantee's cable television system.

9-1-17 **ACCEPTANCE.** This Code shall become effective when accepted by Grantee and shall then be and become a valid and binding contract between the City and Grantee; provided that this Code shall be void unless Grantee shall, within **ninety (90) days** after the final passage of this Code, file with the City Clerk of the City a written acceptance of this Code and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of things prohibited by this Code.

9-1-18 **UNLAWFUL ACTS.**

(A) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of Grantee's cable television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's cable system without payment to Grantee or its lessee.

(B) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's cable system.

(C) It shall be a misdemeanor punishable by a fine or not more than **Five Hundred Dollars (\$500.00)**, or by imprisonment for a term not to exceed **six (6) months**, or both, for any person to violate any of the provisions of this Section.

9-1-19 **SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of the Code is for any reason held invalid or unconstitutional by any Federal or state court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall affect the validity of the remaining portions thereof.

9-1-20 **EFFECTIVE DATE.** The Code shall become effective upon acceptance by Grantee as provided in **Section 9-1-17**. The effective date shall be the date upon which the written acceptance provided for in **Section 9-1-17** is received by the City Clerk.

(Ord. No. 91-06; 01-11-91)