

Chapter 13

FRANCHISES

CONTENTS

ARTICLE I. IN GENERAL

- § 13-1. Permission and authority established.
- § 13-2. Construction and maintenance responsibilities.
- § 13-3. Rates established.
- § 13-4. Exemption from taxes, license or rental.
- § 13-5. Use of electrical poles.
- § 13-6. Service provision and exemptions.
- § 13-7. Length of agreement.
- § 13-8. Agreement acceptance.
- § 13-9. Rights granted.
- § 13-10. Provisions.
- § 13-11. Franchise grant.
- § 13-12. Rights conferred by franchise.
- § 13-13. Installation of cable system.
- § 13-14. Re-location of property.
- § 13-15. Rates and charges.
- § 13-16. Indemnification.
- § 13-17. Payment to city.
- § 13-18. Publication costs.
- § 13-19. Local office.
- § 13-20. Sale or transfer of franchise.
- § 13-21. Franchise termination.
- § 13-22. Franchise term abatement.
- § 13-23. Severability.
- § 13-24. Plat of system.
- § 13-25. Conflicting ordinances repealed.
- § 13-26. Transfer of franchise ordinance.
- § 13-27. Ordinance affirmed and term extended.
- § 13-28. Effective date.
- § 13-29. Office requirements.
- § 13-30. Inconsistency.
- § 13-31. Publication.
- § 13-32. Renewing the cable television franchise with Galaxy Telecom, L.P.

Chapter 13

FRANCHISES

ARTICLE I. IN GENERAL

Sec. 13-1. Permission and authority established.

That the right, permission and authority be, and the same are hereby granted to said Power Company to construct, maintain and operate in the Village of Freeburg, a municipal corporation organized and existing under and by virtue of the laws of the State of Missouri, a system for the manufacture, transmission, distribution and sale of electricity for lighting, heating and power purposes. The Power Company may construct, maintain and operate all necessary poles, wires, conduits and apparatus necessary or convenient for such system in, upon, over, across, along, and under each and all of the streets, alleys, avenues, bridges and other public places, and may trim trees where necessary in said Municipality in accordance with the ordinances and regulations currently in force in said Municipality.
(Ord. 127, §1)

Sec. 13-2. Construction and maintenance responsibilities.

All poles erected under this ordinance shall be not less than twenty-five (25) feet in length, and all poles and conduits shall be located under such supervision as Municipality may from time to time provide and so as not to injure unnecessarily any pavements, sidewalks, drains, sewers, water pipes or other like improvements; and said Power Company shall repair the damage caused by such location to pavements, sidewalks, drains, sewers, water pipes and other public places. All necessary work shall be done with due and reasonable dispatch and with the least practicable interference with the rights of the public.
(Ord. 127, §2)

Sec. 13-3. Rates established.

The rates to be charged by the said Power Company under this ordinance shall be in accordance with those now or hereafter with and approved by the Missouri Public Service Commission or its legally qualified successor.
(Ord. 127, §3)

Sec. 13-4. Exemption from taxes, license or rental.

That the poles, wires and equipment placed on the streets or public places of said Municipality shall be exempt from any special tax assessments, license or rental charge during the entire term of this franchise.

(Ord. 127, §4)

Sec. 13-5. Use of electrical poles.

The Municipality shall have the right at its expense to use the poles erected by the Power Company for its fire alarm system or any electric police alarm system it may hereinafter adopt; but Municipality shall indemnify and save said Power Company harmless from all damages, injuries, costs and claims for damage to property whatsoever and person whomsoever, in any way caused by or resulting from the installation, operation and removal of such alarm systems on poles of said Power Company.

(Ord. 127, §5)

Sec. 13-6. Service provision and exception.

Said Power Company shall maintain adequate and continuous service to the inhabitants of said Municipality, in accordance with its rules and regulations on file with the Missouri Public Service Commission subject, however, to temporary cessations of service occasioned by fire, explosion, flood, strike, insurrection, mob violence, governmental interference, breakdown or injury to equipment or lines or other accidents or causes not reasonably within control of said Power Company.

(Ord. 127, §6)

Sec. 13-7. Length of agreement.

That all rights and privileges granted by this ordinance are granted for a term of twenty (20) years from and after the acceptance of this ordinance as hereinafter provided; but nothing herein shall be construed as giving said Power Company an exclusive right to the privileges herein granted.

(Ord. 127, §7)

Sec. 13-8. Agreement acceptance.

That after the passage and approval of this ordinance and within sixty (60) days after such approval, this ordinance shall be accepted by said Power Company by the filing with the Clerk of said Municipality an unconditional written acceptance thereof.

(Ord. 127, §8)

Sec. 13-9. Rights granted.

This ordinance, upon acceptance by the Power Company as above provided, shall be and become a valid grant; and the rights therein granted shall thereupon become effective, subject to all the terms and conditions herein set forth.
(Ord. 127, §9)

Sec. 13-10. Provisions.

That all provisions of this ordinance, which are obligatory upon or which inure to the benefit of said Missouri Power and Light Company, shall be obligatory upon and shall inure to the benefit of all successors and assigns of said Missouri Power & Light Company; and the words "Power Company" wherever used in this ordinance shall include and be taken to mean not only Missouri Power and Light Company, but all successors and assigns of said Missouri Power and Light Company.
(Ord. 127, §10)

Sec. 13-11. Franchise grant.

Pursuant to law, a non-exclusive franchise is granted to LaMonte Cable Services, Inc, to construct, own, and operate a cable television system in the City of Freeburg, MO. Said non-exclusive franchise if granted for a period of fifteen (15) years, and shall vest all the rights, privileges and immunities of a cable system with LaMonte Cable Services, Inc., however, said non-exclusive franchise shall be subject to and conditional upon all the terms duties and obligations found in the laws of the State of Missouri, rules and regulations of the Federal Communications Commission, and of this ordinance. (Ord. 147, §2)

Sec. 13-12. Rights conferred by franchise

- (a) This ordinance confers upon the Grantee the non-exclusive right, authority, power and franchise to establish, construct, acquire, own, operate and maintain a cable television system within the City, and to render, furnish and sell such service to the inhabitants of the City and its environs and to use and occupy the streets and other public places within the corporate limits of the City as the same now exists or may hereafter exist for its cable system, including the right to enter and construct, erect, locate, relocate, repair, and rebuild, in, on, under, along, over, and across the streets, alley, avenues, parkways, lanes, bridges, to make use of all land dedicated or acquired for public use and locations approved by the City Engineer, and other public places in the City, all towers, poles, cables, amplifiers, conduits, and other facilities owned, leased, or otherwise used by Grantee for the furnishing of cable service within the City during the continuance of the Franchise hereby granted, and in accordance with the laws and regulations of the United States of America, the State of Missouri and ordinances and regulations of the City of

Freeburg. However, the rights herein conferred shall not include the right to use buildings owned by the City of Freeburg or to construct buildings on any public grounds without the further consent and authorization of the City of Freeburg.

- (b) The poles for the Grantee's distribution system shall be those erected and maintained by anyone authorized to maintain poles in the streets or public ways when and where practicable. It is contemplated that reasonable standard pole attachment will be entered into. Grantee is specifically granted the right to set its own poles in the event reasonable joint use is not possible or feasible. In any areas where electric or telephone utilities are not underground and in any new sub-division or new additions where said utilities are underground, the Grantee will lay its cable underground.
 - (c) The City reserves the right of reasonable regulation of the erection, construction or installation of any facilities by the Grantee and to reasonably designate where such facilities are to be placed within the public ways and places.
- (Ord. 147, §3)

Sec. 13-13. Installation of cable systems.

- (a) The Grantee shall have commenced and accomplished construction of at least fifty percent (50%) of the total cable system facilities authorized in this ordinance within twelve (12) months after the effective date of this ordinance, and shall thereafter equitably and reasonably extend energized trunk cable to such percentage of its franchised area as will accomplish completion of the cable system within (6) months after the beginning of construction.
- (b) The installation of the cable system shall be in accordance with the requirements of the National Electric Safety Code of the American Insurance Assn., latest edition, all applicable laws, ordinance, rules and regulations of the FCC, the State of Missouri, and of the City affecting electrical installations and buildings, now or hereinafter in effect.
- (c) The Grantee, subject to the rights of adjoining property owners, at its expense, shall have the authority to trim trees upon and overhanging streets, alley, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee, all trimming to be done under the supervision and direction of the City, and with the City's consent and agreement.
- (d) The Grantee shall at its expense, protect, support, temporarily disconnect, relocate or remove any property of the Grantee located upon streets, rights of way and easements of the City, when required by the City because of traffic conditions, public safety, street vacation, 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 structure or improvement by the City. If the Grantee fails to do so, the City may cause the necessary work to be completed and Grantee shall be the City the cost thereof within ten (10) days after the receipt of an itemized account of such cost.

- (e) Any pavements, sidewalks, or curbing taken up by Grantee, and any all excavation made by Grantee shall be done only after notice to City, and with City's permission, and shall be done in such a manner so as to cause the least reasonable inconvenience to the inhabitants of the City and to the general public. All repairs and replacements shall be made at the expense of the Grantee, with all reasonable speed, leaving such disturbed areas in as good condition as existed prior to any such taking up or excavation.

(Ord. 147, §4)

Sec. 13-14. Re-location of property.

The Grantee, at the request of any person holding a permit issued by the City, shall temporarily remove, raise or lower its wires or cables to permit the moving of building or equipment. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the Grantee may require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire or cable change. The charge by the Grantee for such re-location shall not exceed Grantee's cost, and in no event shall be more than a reasonable sum for such services, with City to have the authority to determine the reasonableness of Grantee's charge in the event there is a dispute between Grantee and the person requesting re-location of Grantee's property. (Ord. 147, §5)

Sec. 13-15. Rates and charges.

- (a) All rates and charges made by the Grantee for its services shall be fair, reasonable, just and uniform.
- (b) Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall reasonably be necessary to enable the Grantee to exercise its rights and perform its services under this franchise and to assure an uninterrupted services to each and all of its customers.

(Ord. 147, §6)

Sec. 13-16. Indemnification.

- (a) The Grantee agrees to hold and save said City harmless from any and all liability that may arise out of the construction maintenance, operation of use of Grantee's system and works and the providing of such services and to provide and keep in force adequate liability insurance therefor, to the extent of bodily injury limits of \$500,000/\$500,000 and a property damage limit of \$300,000/\$300,000, naming the City as an additional insured, as its interest may appear. Grantee shall also provide and maintain insurance under a Broad Form Automobile Policy, with \$100,000/\$300,000 coverage limits and Workmen's Compensation insurance with Missouri Statutory limits. All insurance shall be issued by a company authorized to do business in the State of Missouri, and shall be provided before the Grantee, its successors or assigns thereof, shall commence the

construction or other operations mentioned in this section. The City shall notify the Grantee's representative or employee in the City, if any, within ten (10) days after presentation of any demand or claim that may arise, whether by suit or otherwise, against the City. Grantee shall maintain on file with the City Clerk at all times a current certificate of insurance. All insurance policies shall, if possible, provide for not less than thirty (30) days notice of cancellation. The policies mentioned herein shall name the City, its officers, boards, commissions, agents and employees as additional insured.

- (b) Grantee agrees to indemnify and save harmless the City, its officers, and employees from and against any and all claims, demands, actions, suits and proceedings by other against all liability to others, including, but not limited to any liability for damages by reason of or arising out of a failure by Grantee to secure consents from the owners, authorized distributors or licensees, or to obtain proper licenses on programs to be delivered by the Grantee CATV system, and against any loss, cost, expense and damages resulting therefrom, including copyright infringement, and including reasonable attorney's fees which the City may incur arising out of the exercise or enjoyment by Grantee of its franchise, irrespective of the amount of the Comprehensive Liability insurance policy required hereunder.

(Ord. 147, §7)

Sec. 13-17. Payment to city.

In consideration of the rights, privileges, and franchise hereby granted, and as compensation to the City for the use of its public ways and places by the Grantee, and to properly regulate the activities of Grantee, the Grantee shall, on or before the last day of January and the last day of July of each year to which this franchise is effective, pay to the City a sum equal to three (3) percent of the gross subscriber revenues for basic cable television service within the then existing corporate limits of the City for the preceding six-month period ending on the last day of December and the last day of June, respectively. The books of Grantee shall be open to inspection by the City at all reasonable times to verify the accuracy of the computation and correctness of the report which shall accompany payment. Grantee shall keep books and records pursuant to established practices using generally accepted auditing procedures. (Ord. 147, §8)

Sec. 13-18. Publication costs.

The Grantee will pay to the City a sum to cover the ordinance publication cost when presented with the bill by the City. (Ord. 147, §9)

Sec. 13-19. Local office.

Grantee shall maintain a local office, or agent, in the City, staffed to provide adequate service during all usual business hours, and have a listed telephone so that messages, complaints and requested for service or repairs or adjustments may be received at any time without toll charges. (Ord. 147, §10)

Sec. 13-20. Sale or transfer of franchise.

This franchise shall not be sold, transferred, leased, assigned, or otherwise disposed of by the Grantee without the prior written consent of the City. (Ord. 147, §11)

Sec. 13-21. Franchise termination.

If the Grantee should violate any of the terms, conditions, provisions of this franchise, or if the Grantee should fail to comply with any reasonable provision of any ordinance of the city regulating the use by the Grantee of the streets, alleys, easements, or public ways of the City, or if the Grantee shall become insolvent, unable, or unwilling to pay its debts, or Grantee abandons the cable system, or after having constructed and placed all or any portion thereof in operation, for any reason fails to operate it for a period of thirty (30) days, and any such violation continues for thirty (30) days after the Grantee shall have been notified in writing by the City to desist from such violation so specified, or if the Grantee is adjudged a bankrupt, or there is notice of a prospective foreclosure or other judicial sale of all or a substantial part of the system, or Grantee is found to have practiced any fraud upon the City, then the City may terminate and cancel this franchise, and thereupon all of the rights and privileges granted by this franchise shall be deemed to have been forfeited and annulled. In the event such forfeiture is imposed, the Grantee shall be afforded a period of six (6) months after a final order of forfeiture, and including any appeal thereof, within which to sell, transfer, convey or otherwise dispose of the above described cable television system to a qualified purchaser at fair market value. During the six (6) months period the Grantee shall operate the cable television system pursuant to the terms and provisions of this franchise. (Ord. 147, §12)

Sec. 13-22. Franchise term abatement.

In the event Grantee is subject to a termination of its franchise under Section 13-21 above, the City may, in lieu of proceeding with franchise termination as hereinabove provided, elect to have the remaining franchise term, granted by this ordinance, abate during the period of any such violation, during the period of any such violation, or during the period Grantee is subject to have its franchise terminated under Section 13-21 above, the net effect being that the franchise term granted herein will be shortened by the period Grantee is in violation of this ordinance, or is subject, under Section 13-21 above, to have its franchise terminated. (Ord. 147, §13)

Sec. 13-23. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City declares that it would have passed this ordinance and each section, subsection, sentence, clause or 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 or other obligation required of Grantee by the franchise granted hereunder. (Ord. 147, §14)

Sec. 13-24. Plat of system.

This ordinance is passed and adopted in conformity with the laws of Missouri, and in addition to other provisions herein set out, said Grantee shall file with the City and obtain approval thereof, a proper map showing and describing the exact location or proposed location of all its facilities within the City's streets, alleys and public ways and secure from the proper City official, approval for the location of, the erection of either above or below ground facilities so as not to interfere with existing public utility franchises, excluding herefrom the necessity or securing prior approval of the City if and when said Grantee obtains pole attachment agreements with existing public utilities for the joint use of poles that may be now existing or may be hereafter erected by such public utility franchise other than by this ordinance. (Ord. 147, §15)

Sec. 13-25. Conflicting ordinances repealed.

All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinances, excluding however, any and all public utility franchises heretofore granted to public utilities, including utilities regulated by the Public Service Commission. (Ord. 147, §16)

Sec. 13-26. Transfer of franchise ordinance.

Pursuant to the Franchise Ordinance, consent and approval is hereby granted by the Village for the transfer and assignment of the Franchise Ordinance by Douglas to Galaxy. The Mayor, Council President, or Presiding Officer of the Village, or any person designed by the Mayor, Council President, or Presiding Officer are hereby authorized to execute the Consent to Assignment attached hereto as Annex 1. (Ord. 168, §1)

Sec. 13-27. Ordinance affirmed and term extended.

All terms and provision of the Franchise Ordinance shall continue in full force and effect except that the remaining term of the Franchise Ordinance shall be extended to expire on the second anniversary of the date of transfer by Douglas to Galaxy. As set forth in the Consent to Assignment, the Village consents to the grant by Galaxy of a security interest in the Franchise Ordinance to its lenders to secure indebtedness or other obligations incurred by Galaxy with respect to the cable television system to be operated by Galaxy pursuant to the Franchise Ordinance. (Ord. 168, §2)

Sec. 13-28. Effective date.

The transfer of the Franchise Ordinance shall be effective upon the closing of the sale by Douglas to Galaxy of the cable television facilities serving the Village of Freeburg. Galaxy shall notify the Village of the transfer of the Franchise Ordinance within thirty (30) days of such closing, and provide therewith a copy of the Assignment and Assumption of Franchise by which the Franchise Ordinance was transferred and assigned by Douglas to Galaxy.
(Ord. 168, §3)

Sec. 13-29. Office requirements.

It is hereby understood that a customer service center with a toll free 800 telephone number fulfills the requirements of the franchise. Residents may contact a customer service representative at anytime during normal business hours regarding service, repairs, adjustments, or complaints, all without any toll charges to any resident or customer.
(Ord. 168, §4)

Sec. 13-30. Inconsistency.

In the event any of the terms and provisions of any other ordinance or regulation of the Village are inconsistent with the terms and provisions of this Ordinance, the terms and provisions of this Ordinance shall govern and control.
(Ord. 168, §5)

Sec. 13-31. Publication.

The Village Secretary/Clerk is hereby directed to publish the caption of this Ordinance in an official newspaper in the Village and to comply otherwise with all applicable notice requirements of law.
(Ord. 168, §6)

Sec. 13-32. Renewing the cable television franchise with Galaxy Telecom, L.P.

The request of Galaxy Telecom, L.P. to renew the cable television franchise dated February 7, 1982, as assigned and amended by Ordinances #168, and to change the expiration date thereof to December 1, 2002 is hereby granted.

Except to the extent affected herein, the Franchise Ordinance dated February 7, 1982, as assigned and amended shall continue in full force and effect.
(Ord. 172, §1)

