



INTRODUCED BY
ALDERMEN TERBROCK, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, KERLAGON, BULLINGTON

AN ORDINANCE REPEALING SECTIONS 7.5-1 TO 7.5-11 OF THE CITY CODE OF ORDINANCES AND ENACTING A NEW SECTION 7.5-1, RELATING TO VIDEO SERVICE PROVIDERS, AND REPEALING OUTDATED CABLE TELEVISION CODE PROVISIONS

WHEREAS, the City has determined it is in the best interest of the public to update its ordinances relating to the regulation of video service providers within the City,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Sections 7.5-1 to 7.5-11 of the Code of Ordinances are hereby repealed and, in lieu thereof, a new Section 7.5-1 is hereby enacted which shall read as follows:

Sec. 7.5-1- Video Service Providers.

A. Definitions.

As used in this Article, the following terms shall have the following meanings unless otherwise defined by context:

FRANCHISE AREA- The total geographic area of the City, including the area authorized to be served by an incumbent cable television operator or incumbent local exchange carrier or affiliate thereof in 2007.

GROSS REVENUES- The total amounts billed to subscribers or received by an entity holding a video service authorization from advertisers for the provision of video services within the City, including:

1. Recurring charges for video service;
 2. Event-based charges for video service, including, but not limited to, pay-per-view and video-on-demand charges;
 3. Rental of set-top boxes and other video service equipment;
 4. Service charges related to the provision of video service, including, but not limited to, activation, installation, repair and maintenance charges;
 5. Administrative charges related to the provision of video service, including, but not limited to, service order and service termination charges; and
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6. A pro rata portion of all revenue derived, less refunds, rebates or discounts, by a video service provider for advertising over the video service network to subscribers, where the numerator is the number of subscribers within the City and the denominator is the total number of subscribers reached by such advertising; but gross revenues do not include:
- a. Discounts, refunds and other price adjustments that reduce the amount of compensation received by an entity holding a video service authorization;
 - b. Uncollectibles;
 - c. Late payment fees;
 - d. Amounts billed to subscribers to recover taxes, fees or surcharges imposed on subscribers or video service providers in connection with the provision of video services, including the video service provider fee authorized herein;
 - e. Fees or other contributions for PEG or I-net support; or
 - f. Charges for services other than video service that are aggregated or bundled with amounts billed to subscribers, provided the video service provider can reasonably identify such charges on books and records kept in the regular course of business or by other reasonable means.

Except with respect to the exclusion of the video service provider fee, gross revenues shall be computed in accordance with generally accepted accounting principles.

HOUSEHOLD- An apartment, a house, a mobile home or any other structure or part of a structure intended for residential occupancy as separate living quarters.

LOW-INCOME HOUSEHOLD- A household with an average annual household income of less than thirty-five thousand dollars (\$35,000.00) as determined by the most recent decennial census.

PERSON- An individual, partnership, association, organization, corporation, trust or government entity.

SUBSCRIBER- Any person who receives video services in the franchise area.

VIDEO SERVICE- The provision of video programming provided through wireline facilities, without regard to delivery technology, including Internet protocol technology, whether provided as part of a tier, on demand or a per-channel basis, including cable service as defined by 47 U.S.C. Section 522(6), but excluding video programming provided by a commercial mobile service provider defined in 47 U.S.C. Section 332(d) or any video programming provided solely as part of and via a service that enables users to access content, information, electronic mail or other services offered over the public Internet.



VIDEO SERVICE AUTHORIZATION- The right of a video service provider or an incumbent cable operator that secures permission from the Missouri Public Service Commission pursuant to Section 67.2675 to 67.2714, RSMo., to offer video service to subscribers.

VIDEO SERVICE NETWORK- Wireline facilities, or any component thereof, that deliver video service, without regard to delivery technology, including Internet protocol technology or any successor technology. The term "video service network" shall include cable television systems.

VIDEO SERVICE PROVIDER OR PROVIDER- Any person authorized to distribute video service through a video service network pursuant to a video service authorization.

VIDEO SERVICE PROVIDER FEE

The fee imposed under Subsection (C) hereof.

B. General Regulations.

- 1) A video service provider shall provide written notice to the City at least ten (10) days before commencing video service within the City. Such notice shall also include:
 - a. The name, address and legal status of the provider;
 - b. The name, title, address, telephone number, e-mail address and fax number of individual(s) authorized to serve as the point of contact between the City and the provider so as to make contact possible at any time (i.e., twenty-four (24) hours per day, seven (7) days per week); and
 - c. A copy of the provider's video service authorization issued by the Missouri Public Service Commission.

- 2) A video service provider shall also notify the City, in writing, within thirty (30) days of:
 - a. Any changes in the information set forth in or accompanying its notice of commencement of video service; or
 - b. Any transfer of ownership or control of the provider's business assets.

- 3) A video service provider shall not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the area in which the group resides. A video service provider shall be governed in this respect by Section 67.2707, RSMo. The City may file a complaint in a court of competent jurisdiction alleging a germane violation of this Subsection, which complaint shall be acted upon in accordance with Section 67.2711, RSMo.

- 4) A video service provider shall comply with all Federal Communications Commission requirements involving the distribution and notification of emergency messages over the emergency alert system applicable to cable operators.

- 5) A video service provider shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its officials, boards, board members, commissions, commissioners, agents and employees, against any and all claims, suits, causes of action, proceedings and judgments ("claims") for damages or equitable relief arising out of:
 - a. The construction, maintenance, repair or operation of its video services network;
 - b. Copyright infringements; and
 - c. Failure to secure consents from the owners, authorized distributors or licensees or programs to be delivered by the video service network. Such indemnification shall include, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim prior to the video service provider assuming such defense. The City shall notify the provider of a claim within seven (7) business days of its actual knowledge of the existence of such claim. Once the provider assumes the defense of the claim, the City may at its option continue to participate in the defense at its own expense. This indemnification obligation shall not apply to any claim related to the provision of public, educational or governmental channels or programming or to emergency interrupt service announcements.

C. Video Service Provider Fee.

1. Each video service provider shall pay to the City a video service provider fee in the amount of five percent (5%) of the provider's gross revenues on or before the last day of the month following the end of each calendar quarter. The City may adjust the video service provider fee as permitted in Section 67.2689, RSMo. Each video service provider is hereby required to file with the Finance Officer a sworn statement showing the gross receipts of such business within the City in the form prescribed by the Finance Officer. For the business transacted and the gross receipts each quarter, a statement shall be due and filed by the last day of the month following the end of each calendar quarter. At the same time the statement is required to be filed, payment of the tax due on the gross receipts reported in the statement shall be made to the City at the rate set forth herein.

2. A video service provider may identify and pass through on a proportionate basis the video service provider fee as a separate line item on subscribers' bills.

3. The City, not more than once per calendar year and at its own cost, may audit the gross revenues of any video service provider as provided in Section 67.2691, RSMo. A video service

provider shall make available for inspection all records pertaining to gross revenues at the location where such records are kept in the normal course of business.

D. Customer Service Regulations.

1. For purposes of this Section, the following terms shall mean:

NORMAL BUSINESS HOURS- Those hours during which most similar businesses in the community are open to serve customers. In all cases the term "normal business hours" must include some evening hours at least one (1) night per week or some weekend hours.

NORMAL OPERATING CONDITIONS- Those service conditions which are within the control of the video service provider. Those conditions which are not within the control of the video service provider include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the video service provider include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the video system.

SERVICE INTERRUPTION- The loss of picture or sound on one (1) or more video channels.

2. All video service providers shall adopt and abide by the following minimum customer service requirements.

- a. Video service providers shall maintain a local, toll-free or collect call telephone access line which may be available to subscribers twenty-four (24) hours a day, seven (7) days a week.
- b. Video service providers shall have trained company representatives available to respond to customer telephone inquiries during normal business hours. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours shall be responded to, by a trained company representative, on the next business day.
- c. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.
- d. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.
- e. Customer service centers and bill payment locations shall be open at least during normal business hours and shall be conveniently located.

- f. Under normal operating conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
1. Standard installations shall be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.
 2. Excluding conditions beyond the control of the operator, the video service provider shall begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The video service provider must begin actions to correct other service problems the next business day after notification of the service problem.
 3. The "appointment window" alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during normal business hours. The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.
 4. A video service provider shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 5. If a video service provider's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer must be contacted. The appointment shall be rescheduled, as necessary, at a time convenient for the customer.
- g. Refund checks shall be issued promptly, but no later than either (a) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier or (b) the return of the equipment supplied by the video service provider if the service is terminated.
- h. Credits for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
- i. Video service providers shall not disclose the name or address of a subscriber for commercial gain to be used in mailing lists or for other commercial purposes not reasonably related to the conduct of the businesses of the video service provider or its affiliates as required under 47 U.S.C. Section 551, including all notice requirements. Video service providers shall provide an address and telephone number for a local subscriber to use without toll charge to prevent disclosure of the subscriber's name or address.
3. As required by Section 67.2692, RSMo., this Section shall be enforced only as follows:
- a. Each video service provider shall implement an informal process for handling inquiries from the City and customers concerning billing issues, service issues and other complaints. If an issue is not resolved through this informal process, the City may request a confidential non-



binding mediation with the video service provider, with the costs of such mediation to be shared equally between the City and the video service provider.

- b. In the case of repeated, willful and material violations of the provisions of this Section by a video service provider, the City may file a complaint on behalf of a resident harmed by such violations with Missouri's Administrative Hearing Commission seeking an order revoking the video service provider's Public Service Commission authorization. The City or a video service provider may appeal any determination made by the Administrative Hearing Commission under this Section to a court of competent jurisdiction, which shall have the power to review the decision de novo. The City shall not file a complaint seeking revocation unless the video service provider has been given sixty (60) days' notice to cure alleged breaches but has failed to do so.

E. Compliance With Other Regulations.

All video service providers shall comply with all other applicable laws and regulations.

Section 2. The following sections of the Code of Ordinances are hereby repealed:

Chapter 7.5, Sections 7.5-71 and 7.5-131 to 7.5-136

Chapter 14, Article VII, Division 2 – Regulation of Rates (Cable Television)

Chapter 14, Article VIII – Rights of Way Usage

Section 3. This Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED this 11th day of February, 2019.

TIM POGUE, MAYOR

APPROVED this 11th day of February, 2019.

TIM POGUE, MAYOR

ATTEST: _____
CITY CLERK