

**ORDINANCE #66084**  
**Board Bill No. 9**  
**Committee Substitute**

An ordinance amending Sections Four (B)(D), Seven (1) (2) and Twenty(D) of Ordinance 65431 relating to certain television systems by adding certain requirements regarding timely notification by the Franchise Agency and the Franchise Authority to the Public Utilities Committee of the Board of Aldermen.

**BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:**

**SECTION ONE.** Section Four of Ordinance 65431 is hereby amended to read as follows:

**SECTION FOUR.** Application procedures.

- A. Any Person interested in obtaining an initial franchise to operate a Cable System in the City of St. Louis shall submit an original and nine copies of a written Application to the Franchise Agency together with a nonrefundable application fee of twenty-five thousand dollars. The Application shall contain the following information:
1. The name, address and business structure of the applicant. If the applicant is a corporation, it shall also state the names, addresses and occupations of its officers, directors and major stockholders, and the names and addresses of any parent or subsidiary companies. If the applicant is a corporation controlled by another corporation, the names, addresses and occupations of the officers, directors and major stockholders of the controlling corporation shall also be stated. If the applicant is a partnership or other incorporated association, the name and address of each member, whether active or inactive shall be set forth, and if one or more partners are corporations, the names, addresses and occupations of such corporation's officers, directors and major stockholders shall also be stated;
  2. A list of all other Cable Systems, if any, in which the applicant (or any partner or major stockholder of applicant) has a direct or indirect interest, stating the location, approximate number of homes served, and the name and address of the local franchising body;
  3. A list of all other Cable Systems, if any, for which the applicant or its corporate parents have obtained franchises but have not yet completed construction. If such other systems exist, the applicant should explain any implications of its financial commitments elsewhere for the financing of its prospective Franchise in the City.
  4. A thorough description of the proposed Cable System to be installed and operated; a construction time-table covering start through completion of all Facilities of the system; a time-table for capability to deliver Subscriber service to each portion of the Franchise Area and for the entire City; and a description of the extent and manner in which existing or future poles or other facilities of public utility companies will be used in the proposed system.
  5. A copy of any contract which may exist between the applicant and any public utility providing for the use of such utility's property, such as poles, lines or conduits, in the City;
  6. A statement setting forth all agreements and understandings whether written, oral, or implied, between the applicant and any other Person with respect to the proposed Franchise or proposed Cable System operation. If a Franchise should be granted to a Person posing as a straw party for or representative of another undisclosed Person, such Franchise shall be deemed void *ab initio* and of no force and effect whatsoever;
  7. An estimate of the cost of constructing the applicant's proposed system and a financial statement prepared in form satisfactory to the City showing applicant's financial status and its financial ability to meet these proposed costs. If construction will take more than one year the estimate shall be broken down to costs for each year;
  8. A schedule of proposed rates and charges to all classes of Subscribers for both installation and monthly Cable Service, consistent with the financial statement required in Section Four.A.7;
  9. A sworn statement acknowledging the applicant's familiarity with and eligibility under the provisions of this Ordinance, the City's customer service ordinance and the rules of the FCC, and its intention to abide by the same;

10. An applicant shall provide any such supplementary information as the City shall at any time demand in order to reasonably determine whether the requested Franchise should be granted. The acceptance or use by the City of any of the written information submitted by the applicant pursuant to this Ordinance shall not constitute any waiver or abrogation of the standards or requirements of this Ordinance with regard to any breach of or non-compliance with this Ordinance which may be reflected in the applicant's written submissions.
- B. The Franchise Agency may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section Four. A. A copy of such waiver must be sent to members of the Public Utilities Committee of the Board of Aldermen, or to such committee, as determined by the Rules of the Board of Aldermen, having jurisdiction over cable television franchises, along with an explanation of such waiver immediately upon its issuance. Issuance of a waiver does not waive the rights of the Franchise Agency to request such waived information after the initial application is filed.
- C. For the purposes of determining whether it shall grant an initial Franchise, the City or its agents may inquire into all qualifications of the prospective Grantee and such other matters as the City may deem necessary to determine whether and under what conditions an initial Franchise should be granted. An applicant shall assist the City in any such inquiry, and if it fails to do so, the application may be denied.
- D. After receiving an initial Franchise application, the Franchise Agency shall specify a public place where interested parties may inspect all such bona fide applications and schedule a public hearing before the Franchise Agency. After the public hearing the Franchise Agency shall send its findings and recommendations to the members of the Public Utilities Committee of the Board of Aldermen, or to such committee, as determined by the Rules of the Board of Aldermen, having jurisdiction over cable television franchises, within 30 days.

**SECTION TWO.** Section Seven of Ordinance 65431 is hereby amended to read as follows:

**SECTION SEVEN.** Transfer

- A. A Franchise shall be a privilege which is personal to the original Grantee. It shall not be sold, Transferred, leased, assigned, or disposed of, directly or indirectly, in whole or in part, either by forced or voluntary sale, merger, consolidation, receivership, appointment of a trustee or foreclosure, or otherwise, without prior consent of the City expressed by ordinance, and then only under such lawful terms and conditions as may therein be prescribed by the City. Upon such approval a Grantee may proceed to make the Transfer under such terms and conditions. Any such Transfer or assignment shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the Franchise by transferee, a duly executed copy of which shall be filed with the Agency within thirty days after any such Transfer or assignment is complete.
- B. Application.
  1. A Grantee shall promptly notify the Franchise Agency of any proposed Transfer. If any Transfer should take place without prior notice to the Franchise Agency (contrary to the requirements of this Section), the Grantee will promptly notify the Franchise Agency that such a Transfer has occurred. The Franchise Authority shall immediately notify the members of the Public Utilities Committee of the Board of Aldermen, or to such committee, as determined by the Rules of the Board of Aldermen, having jurisdiction over cable television franchises, of its notification or knowledge of Grantee's transfer or proposed transfer which took place or is proposed to take place without prior notice to the Franchise Authority.
  2. At least one hundred twenty (120) calendar days prior to the contemplated effective date of a Transfer, a Grantee shall submit to the Franchise Agency an original and nine copies of a written Application for approval of the Transfer. Such an application shall provide complete information as described in this Section Seven.B on the proposed transaction. The Franchise Authority shall notify the Public Utilities Committee of the Board of Aldermen, or such committee, as determined by the Rules of the Board of Aldermen, having jurisdiction over cable television franchises, immediately upon receiving notice of the proposed transfer of the Grantee. At a minimum, the Application must include (subject to the provisions of Section Seven.B.3 regarding confidential, trade secret, or proprietary information):
    - a. all information and forms required under federal law;

- b. a complete and unredacted copy of the agreement(s) to carry out the proposed transaction(s) and of all schedules, exhibits, and other documents attached thereto, together with any documents referred to therein that were prepared for purposes of the proposed transaction, and any other documents necessary to understand the proposed transaction or its effect on the City; provided, however, that the Grantee may, subject to the provisions of Section Seven.B.3, redact (i) confidential, trade secret, or proprietary information, and (ii) documents relating only to other communities and having no material effect on the proposed transaction as applied to the City;
  - c. a diagram or description of the ownership and control of the proposed transferee, showing the relationship of the proposed transferee to its immediate, intermediate, and ultimate owners;
  - d. to the extent already prepared, audited or, if audited statements are not available, otherwise publicly available financial statements for the transferee or, if such statements for the transferee are not available, such statements for the closest corporate parent in the line of control of the transferee, for the last three years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;
  - e. a description of the sources and amounts of the funds or other consideration to be used in the proposed transaction, and, if the proposed transaction requires that the System be used as collateral for debt, the anticipated debt/equity ratio applicable to the System;
  - f. other information necessary to provide a complete and accurate understanding of the financial qualifications of the proposed transferee to meet the Grantee's obligations under the Franchise;
  - g. a statement certifying that the Transfer will not adversely affect Subscriber rates (which may reserve the proposed transferee's right generally to make any lawful changes in rates after the Transfer), or, in the alternative, explaining any such adverse impact that the proposed transferee reasonably foresees; a statement certifying that the Transfer will not adversely affect the quality of service, or, in the alternative, explaining any such adverse impact that the proposed transferee reasonably foresees;
  - h. a description of the transferee's prior experience in cable system ownership, construction, and operation;
  - i. a brief summary of any plans the proposed transferee may have at the time of the Application regarding line extension, plant and equipment upgrades, channel capacity, expansion or elimination of services, and any other changes affecting or enhancing the performance of the system;
  - j. a complete list of any final actions taken in the past five years by a franchising authority with respect to the proposed transferee (or any corporate parent) denying transfer or renewal;
  - k. a complete list of any legal actions known to the transferee (or any corporate parent) relating to cable franchises (other than tax and condemnation actions) filed in any federal or state court or at the Federal Communications Commission in the past three years by a franchising authority against the transferee (or any corporate parent), or by the transferee (or any corporate parent) against a franchising authority, listing for each such action the information normally shown in the case caption and the current status of the case (for example, "settled" or "pending");
3. Confidential, Trade Secret, or Proprietary Information
- a. If a Grantee claims that any specific documents or portions thereof required by Section Seven.B.2 of this Ordinance are confidential, trade secret, or proprietary, then rather than submitting such documents or portions thereof with the Application, the Grantee may redact such specific documents or portions thereof and include with the Application a schedule of all such documents or portions thereof identifying any redacted materials and the basis on which the Grantee believes them to be confidential, trade secret, or proprietary.
  - b. If the City wishes to inspect the confidential, trade secret, or proprietary materials referred to in

Section Seven.B.3.a in unredacted form, then, pursuant to a lawful and reasonable confidentiality agreement as appropriate, the Grantee shall make such materials available for inspection within ten days after the City's written request at a location within the City or as otherwise agreed to by the City and the Grantee, using its best efforts to accommodate the City's reasonable preferences as to the time and place of inspection.

- c. If the City considers the Application incomplete without the redacted information, it shall so notify the Grantee within the first thirty days after submission of the Application. If the City does not so notify the Grantee, the City shall be deemed to have accepted the redactions as not rendering the Application incomplete for purposes of any applicable federal time period for review; provided, however, that this provision shall not be construed to limit any right of the City to request or require such information after the initial thirty-day period (without affecting any review period specified by federal law). If Grantee makes such information available for inspection as provided in Section Seven.B.3.b within ten days after written request by the City, such redactions shall not be a basis for a determination that the Application is not complete.

4. Documents Relating to Other Communities

If a Grantee redacts documents relating only to other communities and having no material effect on the proposed transaction as applied to the City pursuant to Section Seven.B.2.b, the Grantee may redact such documents, and the City may inspect such documents to determine whether they have been properly redacted pursuant to Section Seven.B.2.b, in the same way as for confidential, trade secret, or proprietary information pursuant to Section Seven.B.3.

5. To the extent consistent with applicable law, the Franchise Agency may waive in writing any requirement that information specified in Section Seven.B.2 be submitted as part of the initial application, without thereby waiving any rights the Franchise Agency may have to request such information after the initial application is filed.

C. A Grantee shall have a continuing obligation to update the information specified in Section Seven.B.2 to reflect any material changes after the submission of such information. Such updates shall not alter any deadlines specified by federal law for the City's review of the Transfer.

D. Consent of the City shall not be granted until it has complied with all City Charter requirements applicable to a Transfer.

E. Determination by City.

1. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer, the City may consider, without limitation and including any matter not prohibited by applicable law, the legal, financial, and technical qualifications of the transferee to operate the system; any potential impact of the Transfer on subscriber rates or services; whether the proposed transferee will meet all franchise obligations (including without limitation any outstanding obligation to remedy any past noncompliance); and whether the transferee owns or controls any other Cable System in the City.
2. Any Transfer without the City's prior written approval shall be ineffective, and shall make the Franchise voidable by ordinance, and subject to any other remedies available under this Agreement or other applicable law.
3. A Grantee shall be fully liable under its Franchise for any Transfer that is in violation of the terms of that Franchise and caused in whole or in part by any other Person or Persons, including but not limited to any Affiliates, as if such Transfer had been caused by the Grantee itself.
4. Transferee's Agreement. No application for a Transfer in which a different entity holds the Franchise after the Transfer than beforehand shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of the previous Grantee's Franchise Agreement, this Ordinance, other applicable law, and any other agreements between the City and the previous Grantee, and provides all additional items required thereby (for example, insurance certificates and bonds).

**SECTION THREE.** Section Nineteen of Ordinance 65431 is hereby amended to read as follows:

**SECTION NINETEEN.** Construction.

- A. Each Franchise Agreement shall specify the time by which initial or required upgrade construction thereunder, if any, must begin, and shall specify that construction will be completed with reasonable speed, pursuant to Article XIX of the Charter.
- B. A Grantee shall file a map and progress report with the Franchise Agency at the close of each calendar year, showing the exact areas of the City being served by the Cable System and the location and identification of major component parts of the system.
- C. A Grantee that is constructing its cable system for the first time shall submit monthly construction reports to the Franchise Agency, beginning the month after the Franchise is awarded and continuing until the initial construction required in its franchise agreement is complete. Such a Grantee must submit updated as-built system design maps to the Franchise Agency, or make them available for inspection with notice of their availability, within 30 days of the completion of system construction in any geographic area. These maps shall be developed on the basis of post-construction inspection by the Grantee and construction personnel to assess compliance with system design. Any departures from design must be indicated on the as-built maps, to assist the Franchise Agency in assessing operator compliance with its obligations.
- D. A Grantee shall promptly notify the Franchise Agency of any delays known or anticipated in the construction of its system or in providing access to said system. Notices of construction delays shall be promptly made to the Public Utilities Committee of the Board of Aldermen, or to such committee, as determined by the Rules of the Board of Aldermen, **having jurisdiction over cable television franchises, by the Franchise Agency.**
- E. Failure on the part of a Grantee to commence and diligently pursue each of the material requirements in its Franchise Agreement to complete construction pursuant to this Section Nineteen shall be grounds for termination of its Franchise pursuant to Section Ten; provided, however, that the City may in its discretion extend the time for the commencement and completion of construction and installation and service to Subscribers for additional periods in the event a Grantee, acting in good faith, experiences delays by reasons of circumstances beyond its control.
- F. At such time as a Grantee shall become aware that circumstances beyond its control may prevent its compliance with the provisions of this Section Nineteen, said Grantee shall immediately notify the Franchise Agency, in writing, as to the exact conditions responsible for such delay, and shall show the specific remedy and methods it has undertaken to correct said condition causing the unanticipated delay. Failure to file said written notification by the grantee shall constitute an act of bad faith.
- G. In the event the operation of any part of a franchised Cable System is discontinued for a continuous period of four months, or in the event such system has been installed in any Public Rights-of-Way without complying with the requirements of the Grantee's Franchise, or in the event of expiration, termination or revocation of the franchise and, where applicable, an affirmative determination by the City not to renew such franchise, the City may direct a Grantee promptly to remove at Grantee's cost from the Public Rights-of-Way all such property and poles of such system or part of a system. Any property which the Grantee allows to remain in place twelve months after having been notified by the City that it must be removed (or, if specific right-of-way space occupied by Grantee's plant is immediately needed for purposes of providing cable service, sixty days after such notice) shall be considered permanently abandoned and shall become the property of the City subject to the provisions of any utility joint use attachment agreement.

**Approved: November 21, 2003**