ORDINANCE NO. 442

AN ORDINANCE OF THE CITY OF WOOD HEIGHTS, MISSOURI, GRANTING A NON-EXCLUSIVE FRANCHISE TO MID-AMERICA CATV SYSTEMS, INC., A MISSOURI CORPORATION, TO INSTALL, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM WITHIN THE CITY OF WOOD HEIGHTS, MISSOURI, FOR A PERIOD OF TWENTY YEARS; PROVIDING FOR TERMINATION AND FORFEITURE OF THE FRANCHISE; PROVIDING FRANCHISE FEES THEREFOR AND REGULATION THEREOF; AND PROVIDING TERMS AND CONDITIONS FOR THE OPERATION THEREOF.

SECTION 1: TITLE

This ordinance shall be known and may be cited as the *Wood Heights/Mid-America CATV Systems Franchise Ordinance*.

number than one for each 1,000 people within the corporate limits of the city of Wood Heights, Missouri, or major fraction thereof as shown by the last decennial census.

C. For a license authorizing the sale of malt liquor containing alcohol not in excess of five percent by weight, by the drink, for consumption on the premises where sold, the sum of $52.50. The total number of licenses authorized for the sale of malt liquor under this classification shall not exceed two until the total population of the city reaches 2,000, and thereafter no license shall be issued when the granting thereof will increase the number of such licenses outstanding and in force to a greater number than one for each 1,000 people within the corporate limits of the city of Wood Heights, Missouri, or major fractions thereof as shown by the last decennial census.

D. For a license authorizing the sale of all intoxicating liquor at retail in the original package, not to be consumed upon the premises where sold, the sum of $75.00; provided that no license under this classification shall be issued except to a person engaged in, and to be used in connection with the operation of one or more of the following businesses: A drug store, a cigar and tobacco store, a grocery store, a general merchandise store, a confectionery or delicatessen store, nor to any such person who does not have and keep in his store a stock of goods having a value according to invoices of at least one thousand dollars, exclusive of fixtures and intoxication liquors. The total number of licenses authorized under this classification shall not exceed two until the total population of the city reaches 2,000, and thereafter no license shall be issued when the granting thereof will increase the number of such licenses outstanding and in force to a greater number than one for each 1,000 people within the corporate limits of the city of Wood Heights, Missouri, or major fractions thereof as shown by the last decennial census. The drinking or consumption of intoxicating and non-intoxicating liquors and malt beverages shall not be allowed in, upon, or about the licensed premises of this classification by any person.

E. For a license authorizing the sale of malt liquor containing alcohol in excess of three and two-tenths percent by weight and not in excess of five percent by weight by grocers and other merchants and dealers for sale in the original package, which is hereby defined as any package containing three or more standard beer bottles, direct to consumers, not to be opened or consumed on the premises where sold and not for resale, the sum of $20.00. The total number of licenses authorized for the sale of malt liquor under this classification shall not exceed two until the total population of the city reaches 2,000, and thereafter no license shall be issued when the granting thereof will increase the number of such licenses outstanding and in force to a greater number than one for each 1,000 people within the corporate limits of the city of Wood Heights, Missouri, or major fractions thereof as shown by the last decennial census.

F. For a license authorizing the sale of malt liquor containing alcohol not in excess of five percent by weight, by the drink at retail, for consumption on the premises of any restaurant bar described in the application, between the hours of one o'clock P.M. and midnight on Sunday, by applicant meeting the requirements of and in compliance with "Sunday Sale" or "Restaurant Bar" statute of the State of Missouri, Section 311.097 RSMo., an additional fee of $300.00 per year.

SECTION 13: BEER LICENSEE NOT TO SERVE SET-UPS OR PERMIT POSSESSION OR CONSUMPTION OF HARD LIQUOR

No person holding a license for the retail sale of malt liquor by the drink for the sale or non-intoxicating beer by the drink shall knowingly sell, give away or serve upon the premises described in said license and glass, ice, water, soda water, phosphates or any other kind of liquids to be used for the purpose of mixing intoxicating drinks, and commonly referred to as *set-ups*, nor shall any such licensee permit any person while in or upon the premises covered by such license to possess or consume any intoxicating liquor other than malt liquor if the license is to sell malt liquor containing more than three and two-tenths percent alcohol by weight, or any kind of intoxicating liquor if the license is

SECTION 2: GRANT OF AUTHORITY

The city of Wood Heights does hereby grant to Mid-America CATV Systems, Inc., a Missouri Corporation (hereinafter called the grantee), and the grantee's successors, lessees and assigns, for a term of twenty years from the date hereof, a non-exclusive right, authority, power and franchise to establish, construct, acquire, maintain, and operate a community antenna and closed-circuit electronic system within the city of Wood Heights (hereinafter called the city), to render, furnish and sell community antenna and closed-circuit electronic service from such system to the inhabitants of the city, and to use and occupy the streets and other public places within the corporate limits of the city as the same now exist or may hereafter exist for its community antenna and closed-circuit electronic system, including the right to enter and construct, erect, locate, relocate, repair and rebuild in, on, under, along, over and across the streets, alleys, avenues, parkways, lanes, bridges, easements, right-of-ways, and other public places of the city, all towers, poles, cables, amplifiers, conduits, and other facilities owned, leased, or otherwise used by the grantee for the furnishing of community antenna and closed-circuit electronic service with the city during the continuance of the franchise hereby granted, but expressly subject to the restrictions and conditions hereinafter set out.

SECTION 3: CONSTRUCTION, LOCATION AND INSTALLATION OF FACILITIES

Any pavements, sidewalks or curbing taken up or any and all excavations made by the grantee shall be done under the supervision and direction of the governing body of the city under permits issued for work by the proper officials of the city and shall be done in compliance with all applicable ordinances and laws. All such work shall be done in such a manner as to not unreasonably give inconvenience to the inhabitants of the city and the public generally, and all such pavements, sidewalks, curbing, and excavations shall be replaced and repaired in as good condition as before, with all reasonable speed, by and at the expense of the grantee. Grantee shall make and keep full and complete plats, maps, and records showing the exact location of its facilities located within the city. The grantee shall not place facilities or fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrants or mains or sewer lines. All fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways. The grantee shall have, and is hereby granted, the right to place cable, booster equipment and other allied equipment necessary or convenient for the transmittal of television signals by cable, upon all poles now existing, or in the future erected, in street areas or public utility easements in the city of Wood Heights, Missouri, which belong to or are used by the city; provided, however, such permission shall not extend to any joint poles where such permission would be inconsistent with the terms of existing joint pole use agreements. Grantee shall bury its cable in all parts of the city as herein before permitted where there are no existing public utility poles, and grantee shall not erect any pole or transmission tower without express permission from the board of aldermen of the city. The city reserves the right to reasonably regulate the installation and removal of aforesaid facilities.

SECTION 4: GRANTEE INDEMNIFICATION AND LIABILITY

Grantee shall save the city harmless from all losses sustained by the city, and shall defend the city at grantee's expense in all actions which may be commenced against the city, by reason of any suit, judgment, execution, claim or demand whatsoever resulting from any negligence or intentional misconduct on the part of grantee or its agents in the installation, operation or maintenance of its cable television system within the city. Grantee shall carry public liability insurance for bodily injury or death in the sum of $500,000.00 and for property damage in the sum of $300,000.00, for each accident or occurrence,

and the city shall be named as an additional insured. Such insurance shall be carried with any insurance company authorized to do business in the State of Missouri and with a recognized national rating acceptable to the city. Grantee shall produce to the city satisfactory evidence of all such coverage before commencing any operations under this ordinance, and shall at all times thereafter maintain on file with the city a current certificate of insurance. The city and grantee shall each give to the other not less than ten days notice of any claim, suit, demand or notice of cancellation affecting such insurance coverage when same may come to the attention of either party.

SECTION 5: SIGNAL QUALITY REQUIREMENTS

The grantee shall comply with all technical standards established by the Federal Communications Commission (hereinafter FCC) for cable television systems, limit system failures to a minimum by locating and making every reasonable effort to correct malfunctions thereof within forty-eight hours from receipt of notice of same, and if unable to correct such malfunctions within such time, grantee shall cause service charges to all customers affected thereby to be abated on a prorated basis until the malfunctions are corrected, and shall demonstrate to subscribers upon request, by instruments or otherwise, that a signal of adequate strength and qualities being delivered.

SECTION 6: OPERATION AND MAINTENANCE

The grantee shall:

A. Render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time practicable;

B. Have a listed local telephone, and be so operated that complaints and requests for repairs and adjustments may be received at the time during normal business hours. Grantee shall provide a representative to receive said complaints and requests, and shall maintain a record of all complaints received, which record shall be available for inspection by any agent of the city upon reasonable notice during normal business hours and which records shall, for each complaint, include at least the following information: Name of complainant, date and approximate time of grantee's response, a brief description of the fault, corrective steps taken, if any, date of final resolution of the complaint, and identification of the person resolving the complaint.

C. Install, maintain and operate grantee's cable television system in compliance with the material and engineering standards of all joint pole use agreements and the provisions of the latest addition of the National Electrical Code and any other applicable ordinance and laws;

D. Change the location of, or otherwise alter, at Grantee's expense, any facilities within the city when, in the opinion of the city, for good cause, the public health, safety or welfare or convenience requires such changes;

E. On the request of any person holding a building moving permit (or equivalent) issued by the city, temporarily raised or lower its wires to permit the moving of buildings or other structures. The expense of such temporary moving, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payments on advance. The grantee shall be given not less than seventy-two hours advance notice to arrange such temporary wire changes.

F. The grantee shall provide the services of every area of the city of Wood Heights which shall have a density of forty houses per mile. At any time in the future if any area which at the present time does not have forty houses per mile shall develop to the extent that it shall constitute forty houses per mile for such area, then grantee shall provide service to such area within ninety days after written notice that such area shall have reached forty houses per mile. Failure of the grantee to perform the duties under this section shall be sufficient for the city of Wood Heights to revoke the franchise granted hereunder.

SECTION 7: CARRIAGE OF SIGNALS

All FCC regulations shall be complied with regarding the carriage of the programming of any

existing or future television broadcasting stations which cover the city and its principal broadcasting area.

SECTION 8: EMERGENCY USE OF FACILITIES

In case of an emergency or disaster, grantee shall make available its facilities to the city during the period of such emergency or disaster, upon request by the mayor or a majority of the board of aldermen.

SECTION 9: NEW DEVELOPMENTS

It shall be the policy of the city of liberally amend this ordinance upon application of the grantee when necessary to enable it to take advantage of any advance or developments in the field of providing cable television services which will enable grantee to more effectively, efficiently or economically serve its customers; provided, however, this section shall not be construed to require the city to make any specific amendment. All FCC amendments of Section 76.31 of the FCC rules regulating cable television shall, if required by the FCC, be incorporated into this ordinance within one year of the adoption of such amendment and notice by grantee to the city thereof.

SECTION 10: PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

Grantee shall not in any manner or respect make or grant any undue preference or advantage to any person nor subject any person to any prejudice or disadvantage.

SECTION 11: SERVICE DISCONNECTION

Upon the termination of service to any subscriber, the grantee shall promptly remove all of its facilities and equipment from such subscriber's premises upon request of such subscriber.

SECTION 12: CITY RIGHTS AND FRANCHISE

The city shall have the right to inspect all construction or installation work performed subject to the provisions of this franchise and to make such inspections as it shall find necessary to insure compliance with the terms of this franchise and other pertinent provisions of law or ordinance.

SECTION 13: FORFEITURE

If grantee violates any provision of this ordinance the city may give notice to grantee of such violation, and if such violation is not corrected within a reasonable time from the date of grantee's receipt of said notice then the city may declare the franchise herein granted to be forfeited and may revoke same. Such notice shall be specific and definite as to the provisions of this ordinance allegedly violated, shall be given for good cause, and shall be given by certified mail addressed to grantee at its offices in Excelsior Springs, Missouri. *Reasonable time* means a period of time consistent with the nature of the alleged violation and according to CATV industry standards, not to exceed 120 days without good cause.

In the event that forfeiture is declared, any removal of any facilities within the city installed pursuant to the ordinance shall be at the expense of grantee. Such removal shall be in such a manner that all areas of the city where facilities were located shall be left in as good as condition as such areas were in before removal of facilities.

The forfeiture provisions herein shall be in addition to, and shall not be in lieu of, nor construed to be necessary pre-conditions to the city's pursuit of any rights or remedies which the city may have at law or in equity.

SECTION 14: COMMENCEMENT OF SERVICE

Grantee shall begin operation of its system in the city within 365 days after such passage and approval of the ordinance hereof. The grantee shall be considered in operation within said time if it has constructed facilities to serve fifty percent of all potential subscribers in the city. The remainder of the cable system shall be completed within 550 days of such passage and approval of this ordinance. The failure to commence service to subscribers by grantee within the times specified herein shall be

grounds for forfeiture of the franchise herein granted in accordance with Section 13 of this ordinance.

SECTION 15: RATES AND FREE SERVICE
The initial rates and charges to be charged by grantee shall be as shown on Exhibit "A" attached hereto and incorporated herein by reference. Thereafter, grantee shall be entitled to set its rates for its installation and services, provided however, all rates and charges made or set by the grantee for its services shall be reasonable. There will be no charge for maintenance service. Grantee shall make available to each public school within the city and to the city hall building one free outlet. If more than one outlet is desired at aforesaid locations, additional outlets will be installed at grantee's cost of labor and materials. Grantee must provide at least thirty days' written notice of intent to increase rates to all affected subscribers. The grantee shall cause to be filed with the office of city clerk of the city a current rate schedule during the period of the franchise.

SECTION 16: FRANCHISE FEE
In consideration for the rights, privileges and franchise herein granted, and as a compensation to the city for the use of its public ways and places by grantee, and in lieu of any occupation or business license tax, grantee shall pay to the city on or before the 31st day of January of each year, a sum equal to three percent of the gross receipts from the sale of community and closed circuit electronic services within the then existing corporate limits of the city received by grantee during the last preceding year ending on December 31, provided however, that such annual payments shall not become due until after the grantee has become operational as defined in Section 14 hereof. Each such annual payment shall be accompanied by a statement of all gross receipts received by grantee from all operations within the city for said preceding one-year period. The term *gross receipts* shall mean gross subscriber service revenues per year for said cable television operations, including all specialty tiers, exclusive of any revenues received by the grantee from premium services such as Movie Channel or Home Box Office or pay per view or similar types of supplemental or special sources of programming.

The city shall have the right, but not the obligation, to copy, inspect, and audit grantee's books and records to confirm the accuracy of such statement of gross receipts. If no such request is made by March 1, following each payment date, the grantee's report of such gross receipts shall be deemed accepted by the city.

SECTION 17: TRANSFER OF FRANCHISE
If the grantee shall sell or transfer its franchise and all of its facilities, then it shall give the city written notice of such sale or transfer, such notice to include the name and address of the new franchisee and to be given within thirty days after the grantee has agreed to make such sale or transfer. Any successor, lessee or assigns of grantee shall be subject to all provisions and regulations of this ordinance.

SECTION 18: SEVERABILITY
If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision and such holding shall not effect the validity of the remaining portions thereof.

SECTION 19: ORDINANCES REPEALED
All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 20: EFFECTIVE DATE
This ordinance shall be in full force and effect immediately after its passage by the board of aldermen and approved by the mayor.

Read three times and passed by the board of aldermen on February 13, 1984.