

AN ORDINANCE GRANTING A FRANCHISE TO ROBERT A. PABST, d/b/a OVERBROOK CABLE TELEVISION COMPANY. HIS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA AND TELEVISION SYSTEM IN THE CITY SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE: PROVIDING FOR CITY REGULATION AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM: AND PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE PROVISIONS:

BE IT OR DAINED By the Governing Body of the City of Overbrook,  
Kansas:

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the "City of Overbrook Cable and Television Franchise Ordinance."

SECTION 11. Definition. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(1) "City" is the City of Overbrook.

(2) "Commission" is the City Council of Overbrook.

(3) "Community Antenna Television System," herein after referred to as "CATV System" or "System" means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee.

(4) "Person" is any person, firm, partnership, association, Corporation, company or organization of any kind.

(5) "Grantee" is Robert Pabst doing business as Overbrook Cable Television Company or persons who succeeds Overbrook Cable Television Company in accordance with the provisions of this Franchise.

SECTION III. Grant of Nonexclusive Authority.

(a) There is hereby granted by the City to the grantee the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over, and under the streets, alleys, public ways, and public places now laid out or dedicated, and all extension thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City, of a CATV System for the interception, sale, and distribution of television and radio signals.

(b) The right to use and occupy said streets, alleys, public ways and places 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, public ways, and places, to any person at any time during the period of this Franchise.

(c) In the event grantee shall in the future desire to offer an expanded CATV Service over and above that provided in (a) above, it shall have the right to apply to the City for an amendment to this franchise setting forth the proposed expanded services to be offered, the rates or charges for such expanded services, and the franchise fee it proposes to pay therefore. The City Commission shall thereafter in its next regular meeting or next succeeding meeting consider such application, and upon approval thereof shall issue to grantee an amendment to this Franchise permitting grantee authority to render such expanded service. The City agrees that it will not unreasonably withhold such approval.

(d) That the non-exclusive franchise granted to said grantee is granted by the City upon notice being given and a public hearing held pursuant to the provisions of Kansas Statutes Annotated 12-2007.

**SECTION IV. Compliance with Applicable Laws and Ordinances.**

The grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide.

**SECTION V. Territorial Area Involved.** This Franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise.

**SECTION VI. Indemnification of City.**

(a) The Grantee shall at all times protect and hold harmless the City from all claims, actions, suits, liability, loss, expense, or damages of every kind and description (herein collectively referred to as "claims") including investigation costs, court costs and attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Company in the ownership, construction, repair, replacement, maintenance, and operation of the Cable Television System. The City shall give the Grantee prompt written notice of any such claims filed against it.

(b) The Grantee shall maintain in full force and effect during the life of any Franchise, public liability insurance in a solvent insurance company authorized to do business in the State of Kansas, and shall provide to the City Clerk of Overbrook, Kansas, proof of said insurance at no less than the following amounts:

- (1) \$50,000.00 on property damage in any one accident;
  - (2) \$100,000.00 for personal injury or death to any one person;
  - (3) \$300,000.00 for personal injury or death in any one accident,
- provided however, that all such insurance may contain reasonable deductible provisions not to exceed \$1,000.00 for any type of coverage.

**SECTION VII. Signal Quality Requirements.** The Grantee agrees that it will provide a cable system to its subscribers which will meet or surpass the applicable Technical Standards as they have been adopted by the FCC. That in addition to the standards established by the FCC, grantee shall:

(1) Produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair, and as good as the state of the art allows:

(2) Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems:

(3) Limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than eight(8) hours after notice, unless the condition causing the malfunction be beyond reasonable control of grantee, in which event, grantee shall repair malfunctions as soon as possible;

(4) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

**SECTION VIII. Operation and Maintenance of System.**

(a) The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

(b) The grantee shall maintain an office which shall be open during usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received at any time.

SECTION IX. Carriage of Signals. The grantee shall receive and distribute television and radio signals which are disseminated to the general public without charge by broadcasting stations licensed by the Federal Communications Commission. All FCC regulations shall be complied with regarding the carriage of the programming of any existing or future television broadcasting station which covers the City of Overbrook and its principal broadcasting area.

SECTION X. Program Alteration. All programs of broadcasting stations carried by the grantee shall be carried in their entirety as received, with announcements and advertisements and without additions, in accordance with applicable FCC rules.

SECTION XI. Services. When existing distribution or trunk cable passes through the following locations, the grantee shall provide services to said locations on the request of the City and at no cost to it or to the site designated below:

- (a) Fire and Police Departments.
- (b) Public Schools and Administrative Buildings.
- (c) City hall and public facilities.
- (d) Educational Institutions.

SECTION XII. Emergency Use of Facilities. In the case of any emergency or disaster, the grantee shall, upon request of the City Commission make available its facilities to the City for emergency use during the emergency or disaster period.

SECTION XIII. Other Business Activities. Neither grantee nor any subsidiary of grantee shall engage in any business not authorized by this Franchise within the Franchise area without first obtaining approval of the City.

SECTION XIV. Safety requirements.

- (a) The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for

preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) The grantee shall install and maintain its wire, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code promulgated by the National Bureau of Standards, and in such manner that they will not interfere with any installations of the City or of a public utility serving the City.

(c) All structures and all lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the city, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(d) The grantee shall maintain a force of one or more resident agents or employees at all time and shall have sufficient employees at all times to provide safe, adequate, and prompt service for its facilities.

SECTION XV. New Developments. It shall be the policy of the City liberally to amend this Franchise, upon application of the grantee, when necessary to enable the grantee to take advantage of any developments in the field of transmissions of television and radio signals which will afford it an opportunity more effectively, efficiently, or economically to serve its customers. Provided however, that this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

If any such new developments would tend to make Catv service more economical, Grantee agrees to pass a reasonable proportion of the savings generated thereby to its subscribers.

SECTION XVI. Conditions of Street Occupancy.

(a) All transmission and distribution structures, lines, and equipment erected by the grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys, or other public ways and places.

(b) In case of disturbance of any streets, sidewalks, alleys, public ways, paved or other improved area, grantee shall be responsible for putting said areas back in as good a condition as before the work involving such disturbance was done. All such disturbances shall be reasonable and properly marked and protected with signs and warnings by grantee.

(c) If at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the grantee upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

(d) Any poles or other fixture placed in any public way by the licensee shall be placed in such a manner as not to interfere with the usual travel on such public way.

(e) The grantee shall, on the request of any person holding a building-moving permit issued by the City or other lawful authority, temporarily raise or lower its wires to permit the moving of buildings.

The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to 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 changes.

(f) The grantee at its own expense shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, except that at the option of the City. Such trimming may be done by it or under its supervision and direction at the expense of the grantee.

(g) In all sections of the City where the cables, wires, or other facilities of public utilities are placed underground, the grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits the grantee to do so.

**SECTION XVII. Preferential or Discriminatory Practices Prohibited.**

The grantee shall not, as to rates, charges, service, service facilities, rules, regulations, or in any other respect make or grant any undue preference or advantage to any person, nor subject any person to any prejudice or disadvantage. However, nothing in this provision shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for purposes of attracting subscribers.

**SECTION XVIII. Removal of Facilities Upon Request.** Upon termination of service to any subscriber, the grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

**SECTION XIX. Transfer of Franchise and Facilities.**

The grantee shall not transfer or assign this Franchise or sell or transfer its plant or system to another, without prior written approval of the commission. Such commission approval shall not be unreasonably withheld; provided, however, that any transfer or assignment made without commission approval, as herein provided,

shall not relieve the grantee from the duty and responsibility of causing the assignee of this franchise to comply with all the terms and conditions of the Franchise or to perform the same himself. Nothing herein shall prevent the grantee from pledging or mortgaging its plant or system as security for monies borrowed, without Commission approval.

SECTION XX. Filings and Communications with Regulatory Agencies.

Copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to this Franchise, shall also be submitted simultaneously to the City Commission.

SECTION XXI. City Rights in Franchise.

(a) The right is hereby reserved to the City or the City Commission to adopt, in addition to the provision contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

(b) The City shall have the right to inspect the books, records, maps, plans, sales tax returns, and other like materials of the grantee at any time during normal business hours.

(c) The City shall have the right to install and maintain upon the poles of the grantee any wire and pole fixtures necessary for a police alarm system on the conditions that such wire and pole fixtures be installed in accordance with all of the applicable safety and National Electrical Codes and standards and that such fixtures do not interfere with the grantee's operations. When the City desires to install such fixtures, the City and Grantee will enter into a pole attachment agreement

which will provide for a payment by the City to the grantee of not less than the charges which are made by utility companies at that time for similar services. In addition the agreement shall contain a clause whereby the City agrees to indemnify the system for all damages suffered as a result of the City's exercise of this right and to hold the grantee harmless from any claims, actions, and damages arising from the exercise of this right.

(d) The City shall have the right to supervise all construction or installation work performed subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise and other pertinent provisions of law.

(e) At the expiration of the term for which this Franchise is granted, or upon its termination and cancellation, as provided for herein, the City shall have the right to require the grantee to remove at its own expense all portions of the CATV system from all public ways within the City.

(f) At the expiration of the term for which this Franchise is granted, or upon its termination or cancellation as provided for herein, grantee shall at the request of the City surrender any and all certificates of compliance held by it from the Federal Communications Commission, pertaining to CATV service in the City, and agrees not to oppose the issuing of such a certificate of compliance by the FCC to another Franchisee chosen by the City; or the grantee may sell its CATV system in the City to the City's new Franchisee upon such terms and conditions as the parties may at the time agree.

SECTION XXII. Maps, Plats, and Reports.

(a) The grantee shall file with the City Clerk true and accurate maps or plats of all existing and proposed installations.

(b) The grantee shall file annually with the City Clerk not later than One Hundred Twenty (120) days after the end of the grantee's fiscal year, an income statement applicable to its operations during the

preceding 12-month period, a balance sheet, and a statement of its properties devoted to CATV operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation. These reports shall be prepared or approved by a certified public accountant and there shall be submitted along with them such other reasonable information as the City Commission shall request with respect to the grantee's properties and expenses related to its CATV operations with the City.

SECTION XXIII. Payment to the City. The grantee shall pay to the City on or before January 20 and July 20 of each year, a 3% Franchise fee based on Gross Annual Subscriber Revenues received for cable television operations in the City for the preceding six months. Gross Annual Subscriber Revenue shall consist only as service charges authorized by this Franchise, or amendments hereto.

*\* payable monthly see. 2-10-88 minutes*

No other fee, charge, or consideration shall be imposed. At the time of each payment due hereunder, the grantee shall provide to the City an annual summary report showing Gross Annual Subscriber Revenues received during the preceding year.

SECTION XXIV. Forfeiture of Franchise.

(a) In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, the City reserves the right to terminate and cancel this Franchise and all rights and privileges of the grantee hereunder in the event that the grantee:

(1) Violates any provision of this Franchise or any rule, order, or determination of the City or City Commission made pursuant to this Franchise, except where such violation is without fault or through excusable neglect;

(2) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;

(3) Attempts to evade any of the provisions of this Franchise or practices any fraud or deceit upon the City.

(b) Such termination and cancellation shall be by ordinance duly adopted after thirty (30) days notice to the grantee provided, however, that if grantee shall correct its default within thirt (30) days, no ordinance of termination or cancellation shall be adopted. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by the City Commission or its representative shall be conclusive unless found by a court of competent jurisdiction not to be supported by the evidence. Provided, however, that before this Franchise may be terminated and cancelled under this Section, the grantee must be provided with an opportunity to be heard before the City Commission as herein provided under Section XXXIV, Procedures.

SECTION XXV. City,s right of Intervention. The grantee agrees not to oppose intervention by the City in any suit or proceeding, which is directly related to the operation of grantee's CATV system in the City, and to which the Grantee is a party.

SECTION XXVL. Further Agreement and Waiver by Grantee. The grantee agrees to abide by all provisions of this Franchise, and further agrees that it will not at any future time set up as against the City or City Commission the claim that the provisions of this Franchise are unreasonable arbitrary, or void.

SECTION XXVLL. Duration and Acceptance of Franchise.

(a) This Franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, and publication as provided by law, and shall continue in force and effect for a term of fifteen (15) years, provided that within thirty(30) days after the date of the passage of this ordinance the grantee shall file with the City Clerk its unconditional acceptance of this Franchise and promise to comply with and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the grantee before a notary public or other

officer authorized by law to administer oaths.

(b) Should the grantee fail to comply with subsection (a) above, it shall acquire no rights, privileges or authority under this Franchise whatever.

SECTION XXVIII. Erection, Removal, and Common Use of Poles.

(a) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the City Commission with regard to location, height, type, and any other pertinent aspect. However, no location of any pole or wire holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the City Commission determines that the public convenience would be enhanced thereby. Provided, however, that grantee will not be required to modify its existing poles in a manner which is inconsistent with the commonly accepted standards of the industry and which do not equally apply to utility companies serving the City.

(b) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the grantee, but it does not make arrangements for such use, the City Commission may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

SECTION XXIX. Number of Channels. The grantee's cable distribution system shall be capable of carrying at least Twenty (20) television channels. Further, the grantee shall make available on (1) channel for commercial and non-commercial service for the benefit of the inhabitants of the city.

Grantee shall give preference to non-commercial service wherever a conflict in scheduling of commercial and non-commercial services arises.

SECTION XXX. Rates.

(a) The rates and charges for television and radio signals distributed hereunder shall be fair and reasonable and no higher than necessary to meet all cost of service (assuming efficient and economical management), including a fair return on the original cost, less depreciation in accordance with standard accounting practices, of the properties devoted to such service (without regard to any subsequent sale or transfer price or cost of such properties.) In determining a fair rate of return, the City shall also consider the service rates charged for service in other Kansas communities, and the rate of return received by such franchises in other Kansas cities.

(b) The City Commission shall have the power, authority, and right to cause the grantee's rates and charges to conform to the provision of subsection (a) hereof, and for this purpose, it may deny increases or order reductions in such rates and charges when it determines that in the absence of such action on its part, the grantee's rates and charges or proposed increased rates and charges will not conform to the said subsection (a).

(c) By its acceptance of this Franchise, the grantee specifically grants and agrees that its rates and charges to its subscribers for television and radio signals shall be fair and reasonable and no higher than necessary to meet all its necessary costs of service (assuming efficient and economical management), including a fair return on the original cost, less depreciation, of its properties located in the Franchise devoted to such service (without regard to any subsequent sale or transfer price or cost of such properties, and without regard to the costs of equipment or operations of other Franchises or business ventures of grantee at other locations.)

(d) By its acceptance of this Franchise the grantee further specifically grants and agrees that the City Commission shall have the power, authority, and right to cause the grantee's rates and charges to conform to the provisions of subsection (c) hereof, and for this purpose the Commission may deny increases or order reductions in such rates and charges when it determines that in the absence of such action on its part, the grantee's rates and charges or proposed rates and charges will not conform to the said subsection(c)

(e) However, no action shall be taken by the City Commission with respect to the grantee's rates under this Section until the grantee has been given reasonable notice thereof and an opportunity to be heard by the Commission with regard thereto.

(f) The following rates and charges are hereby authorized for service under this Franchise and shall not be exceeded by the grantee without prior approval by the City Commission:

	<u>Installation Charge</u>	<u>Monthly charge</u>
<b>Residential Accounts:</b>		
Installation charge;	10.50 during construction phase and one month after completion.	
	15.00 thereafter	
Monthly Service rate:		9.00
HBO Service:		9.00
Each additional outlet:		1.50
FM outlet only		1.00

*approved 3-13-85*  
*9.00 + 10.00 plus 3% int. fee*  
*approved 5-11-88*  
*12.00 per mo plus franchise fee*

**Commercial Accounts:**  
 Installation Charge: time and material plus 20% for overhead and contingencies.  
 Monthly Service rate for first outlet: 9.00  
 Each additional outlet will negotiate provided that, in the case of multiple dwelling units where all service is billed to one customer, the monthly service and connection charges shall be determined by negotiations between the Grantee and such customer.

(g) The grantee shall receive no deposit, advance payment or penalty from any subscriber or potential subscriber without approval of the Commission.

)h) The grantee shall receive no consideration whatsoever of or in connection with its service to its subscribers other than in accordance with this Section, except for interest charges allowed by law on bills outstanding for more than 30 days.

SECTION XXXI. Flow-through of Refunds. By its acceptance of this Franchise, the grantee specifically grants and agrees that if, during the term hereof, it received refunds of any payments made for television or radio signals, it shall without delay notify the City Commission, suggest a plan for flow through of the refunds to its subscribers, retain the refunds pending order of the Commission, and flow through such refunds in accordance with the order of the Commission.

SECTION XXXII. Complaints. The grantee at the time of initial subscription to the system shall provide each subscriber with a written notice of the procedures for reporting and resolving complaints as provided in this Franchise or as established by agreement of grantee and the City Commission.

SECTION XXXIII. Federal Regulation. Any lawful modification resulting from amendment of Section 76,31 ("Franchise Standards") of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this Franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, with on (1) year of adoption or at the time of Franchise renewal, whichever occurs first.

SECTION XXXIV. Procedures.

(a) Any inquiry, proceeding, investigation, or other action to be taken or proposed to be taken by the City in regard to the operation of grantee's cable television system, including action in regard to termination, cancellation, or a change in subscription rates shall be taken only after public notice of such action or proposed action and the time and place of a public hearing hereon is published once a week for

three (3) consecutive weeks in some newspaper printed and published and having general circulation in the City; a copy of such legal notice of action or proposed action is served directly on grantee either personally or at its office in Overbrook, Kansas; at least fifteen (15) days prior to the date of said public hearing; and the grantee is given the opportunity to respond in writing and/or to be heard at said hearing.

(b) The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the City.

SECTION XXXV. Parties' Rights and Duties upon Expiration or Cancellation of Franchise.

(a) At the expiration of the term for which this Franchise is granted, if the parties are unable to negotiate a new franchise after public hearings upon the same, the City, at its option, and upon payment of the fair market value of the system as determined by arbitration in the manner hereinafter described, shall become the owner of the CATV system in the City as a going business. The fair market value of the system shall be determined by negotiations between the parties, and if the parties are unable to agree within (30) days after the expiration of the Franchise, grantee shall within ten (10) days after their appointment appoint an appraiser, the City shall likewise appoint an appraiser, and the two appraisers so appointed shall within ten (10) days after the appointment of the last appraiser meet in the City, view the CATV System and hear the evidence and contentions of the parties as to fair market value of the CATV System and having heard said matter, shall determine the fair market value, which determination shall be binding upon the parties.

(b) In the event this Franchise is terminated or cancelled other than by expiration of its term, the City, at its option and upon the payment of the depreciated cost value of its system to the grantee, shall become the owner of the CATV System in the City as a going business. The depreciated cost value of the system shall be determined from the books and records of the grantee using standard and accepted accounting methods and procedures, without valuation of any right or privilege appertaining to grantee under this Franchise. Upon the exercise of either of the foregoing options by the City or its assigns, the grantee shall immediately transfer to the City possession and title to all facilities and property, real and personal, of the CATV business, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above; and the grantee shall execute such warranty deeds or other instruments of conveyance to the City as shall be necessary for this purpose. The grantee shall make it a condition of each contract entered into by it with reference to its operations under this Franchise that the contract shall be subject to the exercise of this option by the City and that the City shall have the right to succeed to all privileges and obligations thereof upon the exercise of such option.

(c) In either case of termination of this Franchise as specified above during the interim period while transfer of the system is being arranged, the original Franchisee shall continue service to the public as a trustee for its successor in interest, subject to an accounting for net earnings or losses during the interim period for a period of time not to exceed six (6) months from the date of termination. It is understood and agreed that the original Franchisee shall receive a fee for its services as trustee; and if the parties cannot agree upon a reasonable trustee fee, the amount thereof shall be established by arbitration.

(d) In either case of termination of this Franchise as specified above, the City may assign its right to purchase the grantees' CATV System as a going business to any other person, firm, or corporation which it deems, after holding public hearings upon the question, would be suitable to operate said system under a Franchise from the City.

SECTION XXXVI. Publication Costs. The grantee shall assume the cost of publication of this franchise Ordinance as such publication is required by law and such is payable upon the grantee's filing of acceptance of this Franchise.

SECTION XXXVII. Separability. 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 or the FCC, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION XXXVIII. Commencement of Construction. In the event of the failure of the grantee to commence construction of the system within one (1) year from the enactment of this ordinance and securing of pole franchise with utility company, pole franchise with utility company, pole franchise or pole users agreement with the City, and FCC clearance of compliance, or in the event of the failure of the grantee to render significant community cable television service (shall mean cable television service on a regular basis to 40 % of the franchise population) to the City and the inhabitants thereof, as contemplated and provided before in this ordinance within a period of one (1) year from the effective date of the FCC certification; the City shall have the right on reasonable notice to the grantee, to declare this ordinance and rights of franchise granted thereunder forfeited, Provided further, that the grantee shall within one (1) year subsequent to the first

anniversary of FCC certification make available to 60% of the total Franchise population CATV Service and shall make available CATV service to an additional 20% of the remaining Franchise population each year thereafter until construction is completed.

SECTION XXXIX. This ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law.

Passed and approved by the Governing Body of the City of Overbrook, Kansas, this 21<sup>st</sup> day of January, 1981-

R. D. Cole  
Mayor

ATTEST:

Seal

Mildred Garrison  
City Clerk