

BILL NO. 1643

ORDINANCE NO. 1278-23-13

FIRST READING 12/7/2023

SECOND READING 12/21/2023

AN ORDINANCE AMENDING CHAPTER 615 OF THE ORDINANCES OF THE CITY OF PALMYRA, REGARDING CABLE COMMUNICATIONS

WHEREAS, in 2007 the State of Missouri passed the "Video Services Providers Act", which allows providers of video programming to obtain authority from the Missouri Public Service Commission to operate within the confines of a municipality, prohibits the requirement of a franchise with municipalities except by consent, and modifies various other portions of the previously existing law.

AND WHEREAS, the City Council has reviewed the existing ordinances of the City of Palmyra, specifically Chapter 615 Cable Communications, and has recognized that such section is outdated and that it is necessary to amend said section to bring the Ordinances of the City of Palmyra in compliance with State Law;

NOW THEREFORE, Be it Ordained by the City Council of the City of Palmyra:

Section 1. That the title of Chapter 615 of the Ordinances of the City of Palmyra is hereby amended to:

Chapter 615 Video Service Providers.

Section 2. That Section 615.010 is revoked and a new Section 615.010 is enacted in its place as follows:

Section 615.010 Definitions.

- (1) "Cable operator", as defined in 47 U.S.C. Section 522(5);
- (2) "Cable system", as defined in 47 U.S.C. Section 522(7);
- (3) "City", The City of Palmyra, Missouri, and all the territory within its existing and future territorial corporate limits
- (4) "Franchise", an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license,

resolution, contract, certificate, agreement, or otherwise, that authorizes the provision of video service and any affiliated or subsidiary agreements related to such authorization;

(5) "Gross revenues",

(a) these are revenues limited to amounts billed to video service subscribers for the following:

- a. Recurring charges for video service; and
- b. Event-based charges for video service, including but not limited to pay-per-view and video-on-demand charges;

(b) "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 video service subscribers to recover taxes, fees, or surcharges imposed on video service subscribers or video service providers in connection with the provision of video services, including the video service provider fee authorized by this section;
- e. fees or other contributions for PEG or I-Net support;
- f. Charges for services other than video service that are aggregated or bundled with amounts billed to video service subscribers, if the entity holding a video service authorization reasonably can identify such charges on books and records kept in the regular course of business or by other reasonable means
- g. Rental of set top boxes, modems, or other equipment used to provide or facilitate the provision of video service;
- h. Service charges related to the provision of video service including, but not limited to, activation, installation, repair, and maintenance charges;
- i. Administrative charges related to the provision of video service including, but not limited to, service order and service termination charges; or
- j. A pro rata portion of all revenue derived from advertising, less refunds, rebates, or discounts;

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

(6) "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;

(7) "Person", an individual, partnership, association, organization, corporation, trust, or government entity;

(8) "Public right-of-way", the area of real property in which a political subdivision has a dedicated or acquired right-of-way interest in the real property, including the area on, below, or above the present and future streets, alleys, avenues, roads, highways, parkways, or boulevards dedicated or acquired as right-of-way and utility easements dedicated for compatible uses. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service;

(9) "Video programming", programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20);

(10) "Video service", the provision of video programming provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including internet protocol technology whether provided as part of a tier, on demand, or a per-channel basis. This definition includes cable service as defined by 47 U.S.C. Section 522(6), but does not include any 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;

(11) "Video service authorization", the right of a video service provider or an incumbent cable operator that secures permission from the public service commission pursuant to sections 67.2675 to 67.2714, to offer video service to subscribers in a political subdivision;

(12) "Video service network", wireline facilities, or any component thereof, located at least in part in the public right-of-way 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 systems;

(13) "Video service provider", any person that distributes video service through a video service network pursuant to a video service authorization;

(14) "Video service provider fee", the fee imposed under section 67.2689, RSMo 610.021.

State Law reference— Similar provision, RSMo 67.2677

Section 3. That Section 615.020 is revoked and a new Section 615.020 is enacted in its place as follows:

Section 615.020 Requirements for providing video services.

1. Any person seeking to commence providing video service within the confines of the City shall have first filed an application for a video service authorization covering the City with the public service commission and must have provide written notice to the City of its intent to provide video service.
2. No person shall commence providing video service or commence construction of a video service network within the confines of the City until such person has obtained a state-issued video service authorization.

State Law reference— Similar provision, RSMo 67.2679

Section 4. That Section 615.030 is revoked and a new Section 615.030 is enacted in its place as follows:

Section 615.030. Compliance with FCC requirements for emergency messages. 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.

State Law reference— Similar provision, RSMo 67.2683

Section 5. That Section 615.040 is revoked and a new Section 615.040 is enacted in its place as follows:

Section 615.040. Notice of commencement of service, when. — An entity holding a video service authorization shall provide notice to the City at least ten days before commencing video service within the confines of the City.

State Law reference— Similar provision, RSMo 67.2687

Section 6. That Section 615.050 is revoked and a new Section 615.050 is enacted in its place as follows:

615.050 Fee authorized, amount — exception — adjustment of fee, when

1. The City shall collect a video service provider fee based upon the gross revenues charged to each customer of a video service provider that is providing video service within the confines of the City . The video service provider fee shall apply equally to all video service providers within the City.
2. Beginning April 1, 2024, the video provider fee shall be four and one-half percent of such gross revenues. Beginning August 28, 2024, the video provider fee shall be four percent of such gross revenues. Beginning August 28, 2025, the video provider fee shall be three and one-half percent of such gross revenues. Beginning August 28, 2026, the video provider fee shall be three percent of such gross revenues. Beginning August 28, 2027, and continuing thereafter, the video provider fee shall be two and one-half percent of such gross revenues.
3. The video service provider fee shall be paid to the City on or before the last day of the month following the end of each calendar quarter. Any payment made pursuant to subsection 8 of section 67.2703 shall be made at the same time as the payment of the video service provider fee.
4. Any video service provider shall identify and collect the amount of the video service provider fee and collect any support under subsection 8 of RSMo section 67.2703 as separate line items on subscriber bills.

State Law reference— Similar provision, RSMo 67.2689

Section 7. That Section 615.060 is revoked and a new Section 615.060 is enacted in its place as follows:

615.060. Audits authorized — availability of records, expenses — cause of action for disputes, procedure.

1. The City shall have the authority to audit any video service provider, which provides video service to subscribers within the geographic area of the City, not more than once per calendar year.
2. A video service provider shall, upon request of the City, make available at the location where such records are kept in the normal course of business for inspection by the City all records pertaining to gross revenues received from the provision of video services provided to consumers located within the geographic area of the City.
3. Any expenses incurred by the City in conducting an audit of an entity holding a video service authorization shall be paid by the City.
4. Any suit with respect to a dispute arising out of or relating to the amount of the video

service provider fee allegedly due to the City under RSMo section 67.2689 shall be filed by the City, or by a video service provider seeking a refund of an alleged overpayment, in the Marion County Circuit Court within two years following the end of the quarter to which the disputed amount relates. Any payment that is not challenged by the City within two years after it is paid or remitted shall be deemed accepted in full payment by the City.

5. The City shall not employ, appoint, or retain any person or entity for compensation that is dependent in any manner upon the outcome of an audit of a holder of video service authorization, including, without limitation, the audit findings or the recovery of fees or other payment by the City. A person may not solicit or accept compensation dependent in any manner upon the outcome of any such audit, including, without limitation, the audit findings or the recovery of fees or other payment by the City or video service provider.

6. A video service provider shall not be required to retain financial records associated with the payment of the video service provider fee for longer than three years following the end of the quarter to which such payment relates, unless the City has commenced a dispute regarding such payment in accordance with this section.

State Law reference— Similar provision, RSMo 67.2691

Section 8. That Section 615.070 is revoked and a new Section 615.070 is enacted in its place as follows:

615.070. Customer service requirements

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

(1) "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 night per or some weekend hours;

(2) "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;

(3) "Service interruption", the loss of picture or sound on one or more video channels.

2. Upon ninety days' notice, the City may require a video service provider to adopt the following customer service requirements:

(1) The video service provider will maintain a local, toll-free or collect call telephone access line which may be available to its subscribers twenty-four hours a day, seven days a week;

(2) The video service provider shall have trained company representatives available to respond to customer telephone inquiries during normal business hours;

(3) 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;

(4) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty seconds. These standards shall be met no less than ninety percent of the time under normal operating conditions, measured on a quarterly basis;

(5) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards provided under subdivisions (1) to (4) of this subsection, unless a historical record of complaints indicates a clear failure to comply;

(6) Under normal operating conditions, the customer will receive a busy signal less than three percent of the time;

(7) Customer service center and bill payment locations shall be open at least during normal business hours and shall be conveniently located;

(8) Under normal operating conditions, each of the following four standards shall be met no less than ninety-five percent of the time measured on a quarterly basis:

(a) Standard installations shall be performed within seven business days after an order has been placed. "Standard" installations* are those that are located up to one hundred and twenty-five feet from the existing distribution system;

(b) 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 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;

(c) The appointment window alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-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;

(d) 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;

(e) 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 which is convenient for the customer;

(9) 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 days, which ever is earlier; or

(b) The return of the equipment supplied by the video service provider if the service is terminated;

(10) Credits for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

3. An agency of the state of Missouri shall not have the power to enact or adopt customer service requirements specifically applicable to the provision of video service.

4. A video service provider shall implement an informal process for handling inquiries from the City and customers concerning billing issues, service issues, and other complaints. In the event an issue is not resolved through this informal process, the City may request a confidential nonbinding mediation with the video service provider, with the costs of such mediation to be shared equally between the City and the video service provider.

5. Each video service provider shall maintain a local or toll-free telephone number for customer service contact.

6. (1) 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 the administrative hearing commission seeking an order revoking the video service provider's franchise for that political subdivision. 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.

(2) The City shall not file a complaint seeking revocation unless the video service provider has been given sixty days' notice by the City to cure alleged breaches, but has failed to do so.

State Law reference— Similar provision, RSMo 67.2692

Section 9. That Section 615.080 is revoked and a new Section 615.080 is enacted in its place as follows:

615.080. Immunity of the City, when — indemnification, when — exceptions.

1. An entity holding a video service authorization 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 for damages or equitable relief arising out of:

(1) The construction, maintenance, or operation of its video service network;

(2) Copyright infringements or a failure by an entity holding a video service authorization to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the video service network.

2. Any indemnification provided in subsection 1 of this section shall include, but not be limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to the entity holding the video service authorization assuming such defense. The City shall notify the entity holding the video service authorization of claims and suits within seven business days of its actual knowledge of the existence of such claim, suit, or proceeding. Failure to provide such notice shall relieve the entity holding the video service authorization of its obligations under this section. Once the entity holding the video service authorization assumes the defense of any such action, the City may, at its option, continue to participate in the defense at its own expense.

3. The obligation to indemnify, hold harmless, and defend contained in subsections 1 and 2 of this section shall not apply to any claim, suit, or cause of action related to the provision of public, educational, and governmental channels or programming or to emergency interrupt service announcements.

State Law reference— Similar provision, RSMo 67.2695

Section 10. That Section 615.090 is revoked and a new Section 615.090 is enacted in its place as follows:

615.090. Designation of noncommercial channels

1. The City may require a video service provider providing video service in the City to designate up to two channels for noncommercial public, educational, or governmental "PEG" use. The video service provider may provide such channels on any service tier that is purchased by more than fifty percent of its customers. All video service providers serving the City shall be required to provide the same number of PEG access channels as the incumbent video service provider existing on the date of enactment of sections RSMo 67.2675 to 67.2714.

2. Any PEG channel designated pursuant to this section that is not substantially utilized, as defined in subsection 3 of this section, by the City shall no longer be made available to the City, but may be programmed at the video service provider's discretion. At such time as the City Council makes a finding and certifies that a channel that has been reclaimed by a video service provider under this subsection will be substantially utilized, the video service provider shall restore the reclaimed channel within one hundred * twenty days, but shall be under no obligation to carry that channel on any specific tier.

3. For purposes of this section, a PEG channel shall be considered "substantially utilized" when forty hours per week are locally programmed on that channel for at least three consecutive

months. In determining whether a PEG channel is substantially utilized, a program may be counted not more than four times during a calendar week.

4. Except as provided in this section, the City may not require a video service provider to provide any funds, services, programming, facilities, or equipment related to public, educational, or governmental use of channel capacity. The operation of any PEG access channel provided pursuant to this section and the production of any programming that appears on each such channel shall be the sole responsibility of the City or its duly appointed agent receiving the benefit of such channel, and the video service provider shall bear only the responsibility for the transmission of the programming on each such channel to subscribers.

5. The City must ensure that all transmissions of content and programming provided by or arranged by it to be transmitted over a PEG channel by a video service provider are delivered and submitted to the video service provider in a manner or form that is capable of being accepted and transmitted by such video service provider holder over its network without further alteration or change in the content or transmission signal, and which is compatible with the technology or protocol utilized by the video service provider to deliver its video services.

6. The City shall make the programming of any PEG access channel available to all video service providers in the City in a nondiscriminatory manner. Each video service provider shall be responsible for providing the connectivity to the City's or its duly appointed agent's PEG access channel distribution points existing as of effective date of enactment of RSMo sections 67.2675 to 67.2714. Where technically necessary and feasible, video service providers in the City shall use reasonable efforts and shall negotiate in good faith to interconnect their video service networks on mutually acceptable rates, terms, and conditions for the purpose of transmitting PEG programming within the City. A video service provider shall have no obligation to provide such interconnection to a new video service provider at more than one point per headend, regardless of the number of Cities or other political subdivisions served by such headend. The video service provider requesting interconnection shall be responsible for any costs associated with such interconnection, including signal transmission from the origination point to the point of interconnection. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection acceptable to the person providing the interconnect.

State Law reference— Similar provision, RSMo 67.2703

Section 11. That a new Section 615.100 is hereby enacted as follows:

615.100. Regulation of providers

1. A video service provider shall be subject to to all reasonable police power-based regulations of the City regarding the placement, screening, and relocation of facilities, including, but not limited to:

(1) A video service provider shall provide landscaping to screen the placement of cabinets or structures from public view consistent with the location chosen;

(2) A video service provider shall contact the nearby property owners to communicate what work will be done and when;

(3) A video service provider shall upon request of the City provide alternate placement of facilities, when it is necessary to protect the public right-of-way or the safety of the public. The City shall be allowed to prescribe the time, method, and manner of such placement.

(4) A video service provider upon request of the City shall be required to remove or relocate cabinets, at the expense of the video service provider when necessary to accommodate construction, improvement, or maintenance of streets or other public works, excluding minor beautification projects.

2. The City may not impose the following regulations on video service providers:

(1) Require that particular business offices or portions of a video service network be located in the City;

(2) Require approval of transfers of ownership or control of the business or assets of a video service provider's business by the City, except that the City may require that such entity maintain current point-of-contact information and provide notice of a transfer within a reasonable time; and

(3) Require provisioning of or quality of customer services, facilities, equipment or goods in-kind for use by the City or any other video service provider or public utility.

State Law reference— Similar provision, RSMo 67.2707

Section 12. That a new Section 615.110 is hereby enacted as follows:

615.110. National Electric Safety Code, compliance with required

Every holder of a video service authorization shall, with respect to its construction practices and installation of equipment, comply with all applicable sections of the National Electric Safety Code.

State Law reference— Similar provision, RSMo 67.2709

Section 13. It hereby is declared to be the intention of the City Council that each and every part, portion and sub-portion of this Ordinance shall be separate and severable from each and every other part, portion or sub-portion hereof and that the City Council intends to adopt each said part, portion or sub-portion separately and independently of any other part, portion or sub-portion. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, portions and sub-portions shall be and remain in full force and effect.

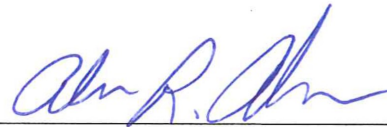
Section 14. All ordinances and parts of ordinances in conflict with this ordinance, in so far as they conflict, are hereby repealed.

Section 15. That this Ordinance shall be in full force and effect from and after its passage and approval.

FIRST READING 12/7/2023

SECOND READING 12/21/2023

APPROVED 12/21/2023



Alan R. Adrian, Mayor

Attest: Deena L. Parsons
Deena L. Parsons, City Clerk



Book _____ Page _____ of the City Records