

APPENDIX C

FRANCHISES*

***Editor's note** - Franchise ordinances of the city are set forth herein. A uniform system of statutory references and numbers has been used. Material in brackets has been added by the editor.

State law reference - Authority of city regarding franchises, Code of Virginia, Section 15.1-307 et seq.

[Article I: Gas Franchise Ordinance](#)

[Article II: Telephone Franchise Ordinance](#)

[Article III: Television Cable Franchise Ordinance](#)

[Article IV: Electric Franchise Ordinance](#)

ARTICLE I. GAS FRANCHISE ORDINANCE* ORDINANCE 0-91-23

An ordinance grant to Commonwealth Gas Service, a Virginia Corporation, ("Grantee"), its successors and assigns, a franchise to use the streets, alleys and other public ways of the City of Covington, for the purposes of laying, constructing, extending, repairing, replacing, renewing, and maintaining along and under the same, pipes and such other facilities as may be necessary or desirable for the maintenance, distribution, and transmission of natural gas within and through the City of Covington, Virginia:

BE IT ORDAINED BY THE CITY COUNCIL OF COVINGTON, VIRGINIA:

Section 1. A franchise is hereby granted to Commonwealth Gas Services, a corporation organized and existing under the laws of the Commonwealth of Virginia, its successors and assigns (Grantee), to use and occupy the streets, alleys, and other public grounds in the City of Covington, Virginia, as now existing or hereafter extended (including by annexation), for the construction, maintenance and operation, in, under, along and through said streets, alleys and other public grounds, of a system of pipes, mains, manholes, connections, meters and other equipment, facilities and appliances (collectively, the "Facilities") necessary or convenient for the transmission, distribution and sale of gas in, through, or to any part of the City of Covington.

Section 2. The materials to be used and the manner of construction and repair to be followed under this franchise shall be such as are commonly used in comparable circumstances and shall conform substantially to the Minimum Federal Safety Standards for the Transportation of Natural and other Gas by Pipeline, 49 Code of Federal Regulations Section 192.1 et seq., or successor regulations.

Section 3. The work to be done under this ordinance shall be done in such manner as not to damage any other underground construction of any other public service corporation holding a franchise from the City or any construction performed by the City itself, or by the Virginia Department of Transportation, or unnecessarily interfere with the making of connections by the City or by the citizens thereof with water or sewerage pipes which may now or hereafter be laid or constructed by the City or by any other public service corporation holding a franchise from the City. When the streets, alleys and other public grounds are used for any underground construction the surface thereof shall be restored within a reasonable time from completion of the work to, as nearly as possible, the same condition as existed prior to such construction.

Section 4. Whenever any of Grantee's Facilities shall prove to be in the way of public street improvements or sidewalks actually being constructed in the City, whether such improvements be new or in the nature of changing any location of or repairing existing streets, sidewalks, alleys, or public grounds in the City, the City may require the Grantee at its cost to move so much of its Facilities as may impede the progress of such improvements, and upon the failure of the Grantee

so to do, the City may, after fifteen day's written notice to the Grantee, itself make or cause to be made such necessary changes in the Facilities of the Grantee at the cost and expense of the Grantee.

Section 5. The Grantee, its successors and assigns, shall, at its own proper cost, promptly replace, relay, repair and restore as nearly as possible to their original condition all streets, sidewalks, water mains or sewers disturbed or damaged in the construction of the work authorized to be done by this franchise; and upon failure to do so, after fifteen days' notice in writing shall have been given by the City, or any duly authorized officer of the City, the City may

***Editor's note** - Gas franchise, Ordinance No. O-91-23, adopted September 10, 1991 is set out herein as enacted, and is codified as superseding prior gas franchise Ordinance No. 43, adopted September 12, 1961.

replace, relay, repair or restore such portion of the streets, sidewalks, water mains or sewers as may be so damaged or disturbed and collect the reasonable cost so incurred from the Grantee, its successors and assigns.

Section 6. By accepting this ordinance and franchise, the Grantee, its successors and assigns, hereby agrees to indemnify and hold harmless the City of Covington from any and all claims, damages, losses, costs, expenses, or judgments which may be awarded in any legal actions, and to pay all expenses including, but not limited to, reasonable attorney fees, reasonable investigative costs and court costs, due to personal injuries or property damage arising from the construction, operation or maintenance of the works herein authorized, the exercise of any right or privilege granted by this franchise, or the performance of any duty hereby imposed; PROVIDED, Grantee has received actual notice of such claim or loss, or received lawful service of process in any legal action or proceeding for which Grantee may be required to reimburse the City under the terms of this provision, and provided further that the Grantee has control of the defense of any such claim or suit. However, no provision of this ordinance shall be construed to render the Grantee liable for the negligence of the City, its agents or employees, its contractors, or any other person. The Grantee, its successors and assigns, shall obtain and keep in full force and effect during the life of this franchise a policy or policies of liability insurance issued by surplus lines insurer(s), in an adequate amount or amounts to be approved by the City, and, upon request, file certificate or certificates thereof in the Office of the Clerk of the City.

Section 7. This franchise is granted under the express condition that the Grantee, its successors and assigns, shall maintain its system for the transmission, distribution and sale of gas in the City of Covington subject to (a) the rules, regulations, orders and directives of the State Corporation Commission of the Commonwealth of Virginia, ("Commission"), and (b) the rates, and general terms and conditions of service contained in the Grantee's tariff, as modified from time to time, on file with the Commission.

Section 8. Upon the expiration of this franchise, the City shall have the right and option to purchase Grantee's Facilities within the City as of that date, other than and excepting cash, accounts receivable, bonds, notes, stocks or other securities owned or held by the Grantee, at a fair valuation to be ascertained by three appraisers or arbitrators, which valuation, however, shall not include any allowance for the value of this franchise. One of such appraisers or arbitrators shall be chosen by the City and one by the Grantee, and the two thus chosen shall select the third. The judgment of said appraisers or arbitrators, or a majority of them, shall be final. In the event the City desires to exercise the foregoing option, it shall give to the Grantee written notice of its intention so to do at least six months prior to the expiration of this franchise.

Section 9. The right of the City to impose any lawful franchise, license, property or other tax upon the franchise herein granted and upon properties constructed or installed by the Grantee hereunder shall not be deemed to be waived, abridged or in anyway affected by this ordinance.

Section 10. This franchise and the rights and privileges hereby granted and conferred are conditioned upon the grantee obtaining from the State Corporation Commission of Virginia such certificates of public convenience and necessity as may be requisite for operations hereunder.

Section 11. Any person, firm or corporation bidding for this franchise shall deposit with the bid his or its check in the sum of \$1,000.00, payable to the Treasurer of the City of Covington, Virginia, which check, on the part of the Grantee awarded this franchise, shall be security to the City that said Grantee will accept the franchise within thirty (30) days after the adoption of the ordinance granting the same. Such acceptance shall be in writing, signed by an officer of the Grantee to accept this franchise pursuant to the provisions of this section, such Grantee shall forfeit to the City the said sum of \$1,000.00 required to be deposited with the bid. The checks of all other bidders shall be returned upon the award of this franchise to the Grantee.

Section 12. The privileges hereby granted shall continue for a period of thirty (30) years from the date of the approval of the ordinance.

ARTICLE II. TELEPHONE FRANCHISE ORDINANCE*

ORDINANCE NO. O-91-20

An ordinance granting a telephone franchise to Clifton Forge-Waynesboro Telephone Company, its successors and assigns, to use the streets and other public places of the City of Covington, Virginia, for its poles, wires, conduits, cables, and fixtures, for a period of thirty (30) years.

BE IT ORDAINED by the Council of the City of Covington, Virginia, that the Clifton Forge-Waynesboro Telephone Company (the "Company"), its successor and assigns, for a period of thirty (30) years from the effective date hereof be and is hereby authorized and empowered to erect, maintain and operate its communication system and associated equipment, including posts, poles, cables, wires and all other necessary overhead and underground apparatus and associated equipment, whether or not the same connect with and at a telephone exchange in said City of Covington, on, over, along, in, under and through the streets, alleys, highways and other public places of the City of Covington, Virginia, as its business may from time to time require, and to use the property of other companies franchised by the City and permit other companies to use its property upon such arrangements as the two companies may agree; provided that:

Section 1. The extent of said franchise shall be the right to use any or all streets, alleys and/or public places within the corporate limits of the City of Covington for the purpose of erecting and maintaining, and thereon to erect, maintain, (but if heretofore established, constructed, maintained, used, and operated, to continue such) and use poles, towers, supports and/or guys thereon, and of carrying and to carry, maintain and use wires, cables and/or conduits over and under said streets, alleys, and/or public places, which rights are to be in coordination with the right of said City of Covington to grant other franchises for the exercise of rights and privileges in, upon and along said streets, alleys, and/or buildings, or any of them, if deemed by it advisable to do so.

Section 2. All poles erected by the Company shall be neat and symmetrical, and be so located as in no way to interfere with the safety or convenience of persons traveling on or over the said streets, alleys, highways and other public places.

Section 3. The location of poles erected by virtue of this ordinance shall be subject to the supervision of the City Manager of the City of Covington, as delegated to the Director of Public Works or his successor in function, and the Company shall replace and properly repair any sidewalks or street pavement which may have been displaced or damaged by it in the construction and maintenance of its system, and upon failure of the Company to do so, after twenty (20) days notice in writing shall have been given by the City Manager or his designee, the City may repair such portion of the sidewalk or street that may have been disturbed by the Company, and collect the costs so incurred from the Company. No underground vaults shall be located in or under City streets or alleys without the prior approval of their location in writing by the City Manager or his designee. So far as may be practicable, the City may require the joint use of such poles now standing as to avoid multiplicity of poles.

The City reserves the right to require such joint use of the Company's poles, towers and supports, or any of them, by the City, or by persons holding rights under grant from said City, it being understood, however, that such joint use shall not be required except as hereinafter provided when it will conflict with, or be a detriment to the said Company's use of its property for the purpose indicated, and further, that the joint use referred to herein, if exercised, shall be only upon reasonable compensation to the Company herein, except as to the use reserved to the City

***Editor's note** - Telephone franchise, Ordinance No. O-91-20, adopted July 18, 1991 is set out herein as adopted and is codified as superseding former telephone franchise Ordinance No. 43-A, adopted September 12, 1961.

Cross reference - Licensing of telegraph and telephone companies, Section 19-108.

in this ordinance.

Section 4. The Company agrees and binds itself to indemnify, keep and hold the City free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from (a) such use of the streets, alleys, highways and other public places of the City, (b) the acquisition, erection, installation, maintenance, repair, operation and use of any poles, wires, conduits, lines, manholes, facilities and equipment, or (c) the exercise of any right granted by or under this franchise or the failure, refusal, omission or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under this franchise, whether such injury or damage occurs during the life of or after the expiration date of this franchise. In the event that any suit or proceeding shall be brought jointly against the City and the Company, at law or in equity, on account thereof, the Company will defend the City in any such suit or proceeding at the cost of the Company, provided the City gives such assistance and the cooperation in the defense of any suit or proceeding as in the opinion of counsel for the Company may be necessary or desirable to a proper defense. In the event of a final judgment or decree in any such suit or proceeding being obtained against the City either independently or jointly with the Company, then the Company will pay such judgment or comply with such decree and bear all costs and expenses of whatsoever nature and hold the City harmless therefrom. Nothing herein contained shall be construed to render the Company liable for (i) the negligence of the City or of its agents or employees, or for that of any other person, firm or corporation, or (ii) injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from the installation, mounting, operation, repair, maintenance or use by the City of fire, police or other signal wires or other facilities on any pole or in any conduit of the Company.

The City shall indemnify the Company to the same extent as the Company agrees to indemnify the City under section 4 hereof in the event that the Company suffers loss or damages as a result of the items set forth in Section 4(i)(ii).

Section 5. The City reserves the right by ordinance or resolution to establish any reasonable regulations for the convenience, safety and protection of its inhabitants under its police powers. The rights herein granted are subject to the exercise of such police powers as are the same now or may hereafter be conferred upon the City. Without limitation as to the generality of the foregoing, the City reserves the full scope of its power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City and with such contributions or at such rates and charges as may then be in effect under the procedures of the State Corporation Commission or its successor in function. The City further reserves the full scope of its police power to require by ordinance the location, construction and maintenance of overhead service at the rear of property or underground service wherever reasonable in all new service installations in the City with such contributions or at such rates and charges as may then be in effect under the procedures of the State Corporation Commission or its successor in function.

Section 6. The Company shall render to the public in the City, and to the City itself, at all times during the term of this franchise efficient telephone service at reasonable rates, as shall from time to time may then be in effect under procedures of the State Corporation Commission or its successor in function. The Company will maintain its poles, wires, conduits, lines, manholes, facilities and equipment within the City in good order and operating condition throughout the term of this franchise, and the Company by accepting this franchise agrees that the State Corporation Commission or its successor in function has jurisdiction to the full extent and in the manner now or hereafter provided by law, during the term of this franchise, to require the Company to render efficient telephone service at reasonable rates.

Section 7. In consideration of the rights and privileges herein granted, the Company shall on demand, during the life of this franchise, where applicable, provide crossarm or bracket space on each pole, or space in each conduit, on or in which the City of Covington may desire to attach

either fire, police or other signal wires, for the free use of the police and fire alarm systems of the City and the City shall, without cost or charge, have the unconditional right to use any such poles or fixtures erected pursuant hereto for the purpose of posting and/or painting traffic signs thereon; provided, however, that any such use of space by the City shall be conducted so as not to interfere with the Company's use of its poles and conduit; and provided further that the Company shall have no responsibility for the installation, mounting, operation, repair, maintenance or use of any such signal wire. All such use of Company facilities by the City of Covington shall be in accordance to the National Electric Code, National Electric Safety Code and other federal and state regulations. Prior approval by the Company is required before the City of Covington utilizes any of the Company's facilities.

Section 8. In placing or maintaining its structures upon and along the streets, alleys and/or public places or the City or otherwise, the Company shall not injure or in any manner cut or trim the trees, branches of trees along and in such streets, alleys, and/or public places without the previous permission of the City Manager or his designee. All such trimmings shall be performed in a safe and orderly manner and, to the extent practicable for the proper maintenance and use of the Company's lines or other facilities, in compliance with the guidelines set forth by the State Corporation Commission, as in effect from time to time, and the local tree ordinance.

Section 9. The Company, before the exercise of any rights, or privileges hereunder, shall first execute a bond in favor of the City of Covington, in the penalty of \$5,000.00 with good and sufficient surety, to be approved as to form by the City Attorney of the said City, conditioned that the Company will maintain its structures upon said streets, alleys and/or public places in the City of Covington in good order throughout the term of the grant, and that it will indemnify the City of Covington against any damage, loss or expenditure, suffered or incurred by it by reason of the construction, repair, maintenance, operation or removal of said telephone system from said streets, alleys and/or public places, or the noncompliance on the part of the Company with any of the conditions and provisions in said grant contained.

Section 10. The rights and privileges so granted may be assigned and in the hands of any such assignee or assignees other than an affiliate shall be subject in all respects to the conditions and provisions hereinabove set forth provided that the bond required in Section 9 may be increased to \$50,000.00 in the City discretion before any such assignment shall be effective.

Section 11. Upon the termination of this franchise by expiration of the period for which it is granted, it shall be the duty of the Company to remove at its own cost all of its structures which the City, at the time of such termination, may require to be removed.

Section 12. Nothing in this franchise shall be construed to mean that this is an exclusive franchise, as the City Council reserves the right to grant additional telephone franchises to other parties.

Section 13. All ordinances and parts of ordinances in conflict herewith are repealed.

ARTICLE III. TELEVISION CABLE FRANCHISE ORDINANCE*

ORDINANCE NO. O-03-22

AN ORDINANCE TO GRANT A NON-EXCLUSIVE FRANCHISE TO NTELOS CABLE OF VIRGINIA, INC., ITS SUCCESSORS OR ASSIGNS, TO OWN AND OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF COVINGTON, VIRGINIA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; AND PROVIDING FOR THE REGULATION AND USE OF SAID SYSTEM.

WHEREAS, the City of Covington, Virginia previously adopted the "Sammons Communications of Virginia, Inc. Franchise Ordinance," adopted February 9, 1993 as Television Cable Franchise Ordinance No. O-93-04, which was accepted by Sammons Communications of Virginia, Inc. ("Sammons"), and

WHEREAS, effective March 31, 1995, Sammons assigned its rights, titles and interests under the Sammons Franchise Ordinance to NTELOS Cable of Virginia, Inc. ("NTELOS") (formerly known as CFW Cable, Inc.), and

WHEREAS, NTELOS has requested the consent of the City of Covington to transfer its rights, titles and interests under the Sammons Franchise Ordinance to Rapid Communications LLC, a Colorado limited liability company, and in connection with that contemplated transfer, has requested the term of the Sammons Communications of Virginia, Inc. Franchise Ordinance be extended; and

WHEREAS, it is the mutual desire of the City of Covington and NTELOS that the City of Covington adopt a cable television franchise ordinance on the terms and conditions set forth herein which shall amend and restate in its entirety and supersede the Sammons Communications of Virginia, Inc. Franchise Ordinance.

NOW THEREFORE, be it ordained by the Council of the City of Covington, Virginia that the following Cable Television Franchise Ordinance be and the same is hereby adopted, and upon acceptance thereof by NTELOS shall amend and restate in its entirety and supersede the Sammons Franchise Ordinance.

Section 1. Short Title.

This ordinance shall be known and may be cited as the "NTELOS Cable of Virginia, Inc. Franchise Ordinance."

Section 2. Definitions.

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, the 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.

- (a) "City" is the City of Covington in the State of Virginia.
- (b) "Company" is the grantee of rights under this ordinance awarding a franchise, being NTELOS Cable of Virginia, Inc. and any assignee of its rights under this Ordinance that has been approved in accordance with the terms of this Ordinance.

- (c) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (d) "Cable Television System" or "System" shall mean a system of antennae, cables, wires, lines, towers, waveguides or other conductors, converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying and distributing audio, video and other forms of electronic or electrical signals located in the City.
- (e) "Gross Subscriber Revenues" shall mean all revenues derived by the Company from its operation of System within the City.
- (f) "Basic Subscriber" shall mean a resident of the City who is subscribing to the Company's lowest tier of service received by all subscribers to Company's System.

***Editor's note** - Television cable franchise Ord. No. O-93-04, adopted Feb. 9, 1993, is set out herein as enacted, and is codified, at the editor's discretion, as superseding prior television cable franchise Ord. No. 44-A, adopted May 15, 1962, codified as superseding Ord. No. O-92-23, adopted July 14, 1992, which had set out provisions extending by six months (to January 10, 1993) the franchise originally granted by Ord. No. 44-A. Amendments to Ord. No. O-93-04 are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance.

Section 3. Qualifications of Grantee and Grant of Authority.

In accordance with Section 15.2-2101 of the *Code of Virginia, 1950*, as amended, a descriptive notice of this ordinance and the proposal to grant this franchise was advertised in the Virginian Review on July 22, 2003, and July 29, 2003, which notice also indicated the following matters:

1. That the full text of the ordinance is on file in the office of the City Manager and available for inspection by members of the public during regular business hours.
2. That a public hearing concerning the franchise contemplated to be granted would be held on August 5, 2003 at 6:30 p.m. in the Council Chambers of City Hall, 333 West Locust Street, Covington, VA 2442 at which members of the public affected by the proposed action might appear and comment upon the legal, character, financial, technical, and other qualifications of the Company to operate a Cable Television System in the City; and
3. That qualified parties are invited to bid in writing on the franchise proposed to be granted in the ordinance. Such bids would at said time and place be received and opened in public session and marked for identification by the Mayor.

In accordance with Section 15.2-2102 of the *Code of Virginia, 1950*, as amended, said public hearing was held on the matters contained in said notice by the City Council on August 5, 2003 at 6:30 p.m. at which hearing all parties in interest and citizens were afforded an opportunity to be heard on said matters and at which hearing written bids for the franchise proposed to be granted were received and opened in public session, read aloud by the Mayor and marked for identification by the Mayor, following which the Mayor inquired whether any further bids are offered. No additional bids then being so offered, the bids were closed. Whereupon, it was determined that the highest bid from a responsible bidder was submitted by NTELOS Cable of Virginia, Inc., the terms of such bid being the terms embodied in this Ordinance; therefore, the City hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's construction arrangements are adequate and feasible, and that therefore the City hereby grants to the Company a non-exclusive franchise, right and privilege to construct, erect, operate, modify and maintain in, upon, along, across, above and over and under the highways, streets, alleys, sidewalks, public ways and public places now

laid out or dedicated and extensions 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 Cable Television System for the purpose of distributing television and radio signals and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the purposes herein set forth.

Section 4. Franchise Term.

The Franchise granted the Company herein shall terminate ten (10) years from date of grant.

Section 5. Payments to the City.

The Company shall, during each year of operation under this Franchise, pay to the City three (3) percent of the annual Gross Subscriber Revenues received by the Company for services rendered within the City for the prior year. At the time of payment, the Company shall furnish the City with a report showing the Company's annual Gross Subscriber Revenues during the preceding year. Each annual payment will be made to the City by the 15th day of February for the preceding calendar year.

Section 6. Records and reports.

The Company shall keep full, true, accurate and current books of account reflecting Gross Subscriber Revenues, which books and records shall be made available for inspection and copying by the City's designee at all reasonable times.

Section 7. Rates.

Attached hereto and made a part of this Franchise as Exhibit A is a schedule of current and proposed rates for basic cable television service. The rates may be adjusted by the Company from time to time as determined by the Company.

Section 8. Local Office; Complaint Procedures

During the term of this Franchise, and any renewal thereof, the Company shall maintain within the City of Covington a business office staffed by Company personnel for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, payment collection and similar matters to conduct routine administrative business matters. The local office shall be open to receive inquiries or complaints from subscribers during normal business hours Monday through Friday except for legal and Company holidays and may be reached by a local or toll-free telephone call.

During the term of this Franchise and any renewal thereof, the Company shall employ two in-house service technicians on a full-time basis to respond to and correct any service or equipment problems or malfunctions. Notwithstanding the foregoing, the Company shall not be deemed to have violated this Franchise in the event that it only has one technician on duty due to employee vacations, sick leave, termination of employment or similar occurrences, provided that, in the case of termination of employment, the Company is endeavoring in good faith to hire a qualified replacement. Any service complaints from subscribers shall be investigated and acted upon as soon as possible. The Company shall keep a maintenance service log which will be made available for period inspection by the City.

Section 9. Liability and Indemnification.

The Company shall pay, and by its acceptance of this the Franchise the Company expressly agrees that it will pay, all damages and penalties which the city may legally be required to pay as a result of the Company's negligence in the installation, operation or maintenance of the Cable Television System authorized herein. The City shall notify the Company's representative within fifteen (15) days after the presentation of any claim or demand to the City, either by suit or otherwise, made against the City on account of any negligence or contract as aforesaid on the part of the Company. The Company further agrees as follows:

- (a) Company shall carry Worker's Compensation insurance, with statutory limits, and Employer's Liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000), which shall cover all operations to be performed by Company as a result of this Ordinance.
- (b) Company shall carry Comprehensive General Liability and Comprehensive Automobile Liability insurance with bodily injury limits of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence, and property damage limits of not less than Five Hundred Thousand Dollars (\$500,000).
- (c) Company agrees to furnish City with certificates of insurance of said policies, which shall provide that insurance shall not be canceled unless ten days' prior written notice shall first be given to City.
- (d) It is expressly agreed and understood that the Company is an independent contractor and in no event shall Company's employees be deemed to be employees of the City.

Section 10. System Construction, Maintenance and Procedures.

- (a) The Company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of person, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.
- (b) Extension of service shall not be required into an area which does not meet the requirements set forth in Section 11 of this Franchise, with the exception of Asbury Park which shall be constructed at the same time as power and telephone service is made available following City extension of water and sewer facilities.
- (c) All transmission and distribution structures, lines and equipment erected by the Company 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 or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.
- (d) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed in as good condition as before said work was commenced considering the nature of the work.
- (e) In the event that at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, alley or other public way, the Company 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.

- (f) The Company shall not place poles or other fixtures where the same will interfere with any properly located gas, electric or telephone fixture, water hydrant or main, and all such poles or other 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 manner as not to interfere with the usual traffic on said streets, alleys and public ways.
- (g) The Company shall, on the request of any person holding a building moving permit, issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than five (5) business days advance notice to arrange for such temporary wire changes.
- (h) The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company.
- (i) The Company shall provide one standard installation outlet and free basic service to such outlet in each public school and municipal building within the City. Non-standard installations and additional outlets and services shall be provided at the Company's standard rates.

Section 11. Line Extensions.

To provide for a reasonable and nondiscriminatory policy governing extensions of cable service within the City, which policy was subject to public review in the public proceeding leading to the award of this Franchise, Company shall extend service to new subscribers, at the normal installation charge and monthly rate for customers of that classification, under the following terms and conditions.

- (a) Where the new subscriber, or nearest subscriber of a group of new subscribers is located within 500 feet of existing trunk cable; and
- (b) Where the number of homes to be passed by such new extension is equal to or greater than 30 homes per miles of such extension.
- (c) In the event the requirements of subsections (a) and (b) are not met, the installation cost per subscriber shall be determined as set forth in Exhibit B attached hereto.
- (d) The provisions of this Section shall not apply in the event adverse terrain or other factors render providing service impracticable, uneconomical or technically infeasible.

Section 12. Schedule of Improvements.

The Company shall improve and upgrade its operation in accordance with Exhibit C - Schedule of Improvements, attached hereto and made a part hereof. The requirements of this paragraph shall be contingent upon the Company obtaining all necessary rights and approvals and cooperation from appropriate agencies, which cooperation shall be expeditiously sought by the Company, and upon other circumstances beyond the Company's control (e.g., inclement weather, equipment deliveries, strikes, access to private property). Should the Company anticipate that any extension of any schedule contained in Exhibit C will be necessary, the Company shall notify the City in writing, setting forth and documenting that the delay is due to

reasons beyond the Company's control and the time for the Company's compliance shall be extended by the amount of time related to such delay(s).

Section 13. Public Interest Programming.

The system shall cablecast public interest tapes on behalf of the City and non-profit organizations provided that the tapes may be inserted on the system during regular business hours. Such tapes shall be approximately 30 minutes to 1 hour in length and consist of public interest type programming for non-profit organizations. The system will provide public service announcements for the City and any non-profit organizations on the system's character generator free of charge to the City.

Section 14. Compliance with Standards.

All facilities and equipment of Company shall be constructed and maintained in accordance with the requirements and specifications of the National Electrical Safety Code and such applicable ordinances and regulations set forth by the City and/or any other local, state or federal agencies.

Section 15. Company Rules and Regulations.

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Franchise, and to assure an uninterrupted service to each and all of its customers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of federal and state laws.

Section 16. Procedures.

The Company shall be a party to renewal proceedings and any other proceedings in which its rights, privileges or interests would be affected and shall be fully entitled to such due process rights as may be available under applicable laws, ordinances, rules or regulations.

Section 17. Approval of Transfer.

The Company shall not sell or transfer its System to another, nor transfer any rights under this Franchise to another without written approval by the City, provided that such approval shall not be unreasonably withheld if the vendee, assignee or lessee has filed with the appropriate official of the City an instrument duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this Franchise and agreeing to perform all conditions thereof.

Section 18. Compliance with FCC Rules and Regulations.

The Company shall, at all times, comply with the rules and regulations governing CATV operations promulgated by the FCC. This shall include adherence by the Company to FCC rules regarding technical and engineering specifications involved in the construction of the CATV System and signal carriage therein.

Section 19. Publication Costs.

The Company shall assume the costs of the publication of this Franchise as such publication is required by law. A bill for publication costs shall be presented to the Company by the appropriate City officials upon the Company's filing of its acceptance of this Franchise and the said publication costs shall be paid at that time by the Company.

Section 20. Activities Prohibited.

- (a) The Company shall not allow its cable or other operations to interfere with television reception of persons not served by the Company.
- (b) The Company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

Section 21. Separability.

- (a) 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 portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.
- (b) Should any provision of this Franchise be held invalid by the FCC or any other agency having jurisdiction, such provision shall be invalid, but the remaining provisions hereof shall not be affected thereby.

Section 22. Ordinances repealed.

All ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed.

BE IT FURTHER ORDAINED that this Ordinance take effect from the date it shall have been passed by the appropriate authoritative body, and become effective as otherwise provided by law.

EXHIBIT A
BASIC SERVICE RATES

- A. Primary Outlet Installation
 - 1. Standard Installation
 - a. Aerial - \$25.00
 - b. Underground - \$25.00
 - c. Underground House drop in aerial cable area - Cost plus 10 percent

A standard installation consists of a drop of 150 feet or less from the feeder line to the customer's residence. In the case of an underground installation, a standard installation shall be less than 150 feet and shall not include those installations requiring conduit or cutting of streets, sidewalks or other paved areas.

- 2. Non-Standard Installation - Company's cost of labor and materials plus 10 percent.

- B. Basic Monthly Service - \$31.50

EXHIBIT B
LINE EXTENSION FORMULA

Sammons will extend its trunk and distribution system to service new subscribers requesting service after the date hereof at the normal installation charge and monthly rate under the following terms and conditions.

- (a) Where the new subscriber, or nearest subscriber of a group of new subscribers requesting service are all located within 500 feet of existing trunk cable, and
- (b) Where the number of homes to be passed by such extension is equal to or greater than 30 homes per mile of such extension.

In the event that the requirements set forth in (a) and (b) above are not met, Sammons will extend its cable television system based upon the following cost-sharing formula.

- (1) $\text{Total Cost to Construct Extension}^* / \text{Miles of Extension} = \text{Cost per Mile of Extension}$
- (2) $\text{Total Cost per Mile of Extension} / 30 = \text{Company's Share per Home}$
- (3) $\text{Total Cost to Construct Extension} / \text{Subscribers Requesting Service} = \text{Cost per Subscriber}$
- (4) $\text{Cost Per Subscriber minus Company's Share Per Home} = \text{Subscriber's Share}$

Sammons does not assess any additional cost for service drops of 150 feet or less. For drops greater than 150 feet, the subscriber must pay for the additional feet on a cost-plus-labor basis.

The formula used for each such extension shall be for a two-year period commencing from the date of completion of the particular line extension. During such period a pro rata refund will be paid to previous subscribers as new subscribers are added to a particular extension; such refunds shall be determined by a recomputation of the formula each time a new subscriber is added. Such refunds may be made quarterly to the subscribers entitled to receive them.

The subscriber share of construction cost for initial subscribers and subscribers added during the two-year refund period for an extension constructed pursuant to this formula shall be in lieu of the normal installation charge.

EXHIBIT C SCHEDULE OF IMPROVEMENTS

The Company agrees, subject to Section 12 of the Franchise, to undertake and complete the following system improvements and upgrades.

- a. Within 12 months of the date of grant of this Franchise, the Company shall have the ability to offer and shall make available digital cable service to its subscribers.
- b. Within 24 months of the date of grant of this Franchise, the Company shall have the ability to offer and shall make available internet service to its subscribers.

^{*}Total cost to Construct Extension is defined as the actual turn-key cost to construct the entire extension including electronics, pole make-ready charges, labor and the cost of the house drops.

ARTICLE IV. ELECTRIC FRANCHISE ORDINANCE*

AN ORDINANCE

To grant to Virginia Electric and Power Company, its successors and assigns, the right for the term and upon the conditions herein stated, to use the streets, alleys and public places of the City of Covington, Virginia, and to acquire, erect, maintain and use, and if now constructed to maintain and use, poles, towers, wires and appliances over and along, and to acquire, construct, maintain and use, and if now constructed to maintain and use, conduits or subways, including necessary manholes, and to run cables and wires in, under and along the streets, alleys and public places of said city for the purpose of distributing and transmitting electric current for light, heat and power, and to supply and sell electric current for light, heat and power at any point within the corporate limits of said city as the same now exist or may hereafter be extended or altered.

BE IT ORDAINED by the Council of the City of Covington, Virginia:

Section 1. [Franchise granted.]

That the right is hereby granted unto Virginia Electric and Power Company hereinafter referred to as the "grantee," its successors and assigns, for the term and subject to the conditions and limitations hereinafter stated, to use the streets, alleys and public places of the City of Covington, Virginia hereinafter referred to as the "city." And to acquire, erect, maintain and use, and if now constructed to maintain and use, poles, towers, wires and appliances over and along, and to acquire, construct, maintain and use, conduits or subways, including necessary manholes, and to run cables and wires in, under and along the streets, alleys and public places of the city for the purpose of distributing and transmitting electric current for light, heat and power, and to supply and sell electric current for light, heat and power at any point within the corporate limits of the city, as the same now exist or may hereafter be extended or altered.

Section 2. [Location of structures.]

From and after the date on which this ordinance shall become effective, the poles and other structures in, under and along the streets, alleys and public places of the city authorized by this ordinance to be located and constructed, shall be located at reasonably suitable and convenient points. The grantee shall, from time to time, file with the city plans showing the location of any proposed additional facility that has a fair market value of \$20,000.00 or more and obtain a permit therefor prior to construction of that facility. If and requested by the city manager or other proper administrative officer of the city, the grantee shall, from time to time, file with the city plans showing the location of any other proposed additional poles or structures, and obtain a permit therefor prior to their construction in, under and along the streets, alleys and public places of the city.

Section 3. [Trees.]

In the location and erection of the poles, conduits and other structures and fixtures and in stringing the wires as herein authorized, the said grantee shall have the right to trim, cut and keep clear of its wires and fixtures the trees in and along the streets, alleys and public places of the city, but shall not cut or otherwise injure said trees to any greater extent than is reasonably necessary in the construction, maintenance and operation of the said poles, wires, fixtures, and other structures of the said grantee as herein authorized and provided.

***Editor's note** - Electric franchise ordinance, Ordinance No. O-76-13, adopted December 14, 1976, is set out herein as enacted.

Cross reference - Electricity, ch. 12.

Section 4. [Repair of pavement.]

In the event the said grantee shall, in the construction or repair of its works, injure any pavement, sidewalk, sewer, water or other pipe or works belonging to the city, it shall upon notice thereof from the city manager, promptly repair the same at its own cost and expense.

Section 5. [Joint use of poles, etc.]

The said grantee shall, when so requested by the city council, permit its poles, towers and other structures to be used without compensation by said city for the purpose of placing thereon any traffic lighting, fire or police alarm, telegraph or telephone wires which may be necessary for the exclusive use of the police or fire department of the city; provided that such use by the city shall not interfere with the proper use of said poles, structures, and fixtures by the said grantee, and that the location and character of said wires and fixtures of the said city shall be subject to the approval of the grantee herein, and provided further that the said city shall, and it hereby agrees to, indemnify and save harmless the said grantee from any and all loss, damage, cost or expense to, or which may be incurred by said grantee, or to which it may be subjected by reason of or as a result of the use of said poles and structures by the city as in this section provided.

Section 6. [Indemnity.]

The said grantee agrees and binds itself, by the acceptance of this ordinance, to indemnify, keep and hold the city free and harmless from liability on account of injury or damage to person or property growing out of the construction, improvement, maintenance, repair and operation of its lines or works, and in the event that suit shall be brought against the city; either independently or jointly with said grantee or account thereof, the said grantee, upon notice to it by the city, will defend the city in any suit at the cost of said grantee, and, in event of a final judgment being obtained against the city, either independently or jointly with said grantee, the said grantee will pay such judgment, with all costs, and hold the city harmless therefrom; but nothing herein contained shall be construed to render said grantee liable for the negligence of the city, its agents or employees or of any other person or corporation.

Section 7. [Light and power service.]

The rights and privileges herein set forth are granted and conferred upon the said grantee, upon the express condition and understanding on the part of the said grantee, that it will render to the public in the city within the territory served by the said grantee, at all times during the term of this ordinance, an efficient light and power service at reasonable rates, and that it will maintain its properties, works and structures located within the city in good order throughout the term of this grant, and the said grantee by accepting this ordinance expressly agrees that the state corporation commission shall have jurisdiction, to the full extent and in the manner now or hereafter during the life of this ordinance provided by law, to require the said grantee to render an efficient service at reasonable rates, and to maintain its property in good order throughout the term of this grant, and to otherwise enforce the provisions of this section to the full extent provided by law.

Section 8. [Malicious mischief.]

Any person who shall maliciously or wrongfully tamper or interfere with, cut, injure or destroy any of the poles, wires, fixtures or other property of the said grantee, constructed and maintained in accordance with the provisions of this ordinance, within the corporate limits of the city, shall, on conviction thereof, be fined not less than \$5.00 nor more than \$50.00.

Section 9. [Successors.]

All the rights and privileges hereby granted to said grantee may be exercised by any successor or successors, assignee or assignees of the said grantee, but said successor or successors, assignee or assignees shall be subject to all the provisions, obligations and stipulations and penalties herein prescribed.

Section 10. [Duration.]

The rights and privileges hereby granted shall continue for the period of 30 years from after the final passage of this ordinance, unless the same be sooner voluntarily surrendered by the said grantee, with the consent of the city council, or unless the same be sooner forfeited as provided by law.

Section 11. [Forfeiture of franchise.]

Upon the forfeiture of the franchise hereby granted, or upon its expiration by limitation, all of the property of every kind and description then belonging to the grantee and which shall have been used by it in manufacturing electric current in the City of Covington and in distributing the same to consumers of said city, shall, in the event the city desires to acquire the same, become the property of the City of Covington upon the payment by it of a fair valuation therefor, but the grantee shall be entitled to no compensation by reason of the value of the franchise hereby granted. The said compensation or valuation, if not agreed upon between the City of Covington and the said grantee more than six months before the termination of such franchise by lapse of time, or within 30 days after its forfeiture as aforesaid, shall be determined by arbitration, one arbitrator to be appointed by the City of Covington, and one by said grantee, and, should the two arbitrators so appointed fail to agree upon a valuation, the person then holding the office of judge of the circuit court of Alleghany County shall, individually, and not in his official capacity, have the right to appoint a third arbitrator, who shall not reside within the geographical limits of Alleghany County, and the valuation which shall be placed upon the property aforesaid by any two of the said three arbitrators shall be conclusive and binding upon the City of Covington and upon the grantee; and upon the payment of the compensation, either agreed upon or ascertained by arbitrators, the aforesaid property of the grantee shall vest absolutely in the City of Covington. In the event the city shall not avail itself of the right to acquire said property, it may require the grantee to remove from the streets and alleys of the city, within a reasonable period to be prescribed by the council, all of his property of every kind and description then in and upon the said streets and alleys of the city, and to restore the said streets and alleys to a satisfactory condition, or the grantee may sell such property to any person, firm or corporation to whom there shall have been granted a franchise to use the streets and alleys of the city in the manner prescribed by law.

In the event the city shall deem it proper to acquire the aforesaid property, it shall give to the purchaser notice to that effect, and if the city and said grantee shall be unable to agree upon the price to be paid for the said property, the city shall notify the grantee of the arbitrator it has appointed, and in case the grantee shall fail or refuse for a period of ten days hereafter to appoint his arbitrator as herein provided for, the person then holding the office of judge of the circuit court of Alleghany County shall, individually, and not in his official capacity, have the right to appoint an arbitrator for and in the name of the grantee, and the arbitrator so appointed shall be vested with full authority to act, and his acts shall be as valid and binding on the grantee in all respects as if he had been appointed by him.

Section 12. [Bond.]

This ordinance and the rights and privileges hereby granted and conferred shall not become effective unless and until the said grantee shall file with the clerk of the city its written acceptance thereof, in form satisfactory to the city manager, and shall enter into a bond in the sum of \$1,000.00, with surety satisfactory to construct and maintain, or if constructed, will maintain, the plant or plants provided for herein and reasonably necessary for the exercise of the

rights and privileges granted in and by this ordinance, and will maintain the same in good order throughout the term of this grant, and will comply with the terms, provisions and conditions of this ordinance in all respects.

Section 13. [Existing poles, wires, etc.]

The right is hereby granted to the grantee, insofar as the city may lawfully grant such right, to operate the existing poles, wires and appurtenances, constructed within the corporate limits of the city on the date this franchise is effective, and heretofore operated as an electric light and power distribution system within the city as a part of the electric light and power distribution system of the grantee to be constructed and operated under this franchise.

Section 14. [Effective date.]

This ordinance shall be in force from its passage.