

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO. 3924 ORDINANCE COUNCIL SERIES NO. 08-

COUNCIL SPONSOR MR. GOULD/MR. BINDER PROVIDED BY COUNCIL ATTORNEY

INTRODUCED BY: MR. BILLIOT SECONDED BY: MR. STEFANCIK

ON THE 11TH DAY OF SEPTEMBER, 2008

ORDINANCE TO ESTABLISH FRANCHISE FEE ON HOLDERS OF A STATE ISSUED CERTIFICATE OF FRANCHISE AUTHORITY TO PROVIDE CABLE SERVICE OR VIDEO SERVICE IN UNINCORPORATED ST. TAMMANY PARISH, TO PROVIDE FOR PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS PROGRAMMING AND ACCESS SUPPORT, AND TO OTHERWISE PROVIDE WITH RESPECT TO THOSE MATTERS AUTHORIZED IN CHAPTER 10-A OF TITLE 45 OF THE LOUISIANA REVISED STATUTES OF 1950, THE CONSUMER CHOICE FOR TELEVISION ACT.

WHEREAS, pursuant to Act No. 433 of the Thirty-Fourth Regular Session of the Louisiana Legislature, adopted June 21, 2008, the Legislature enacted Chapter 10-A of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 45:1361 through 1378, relative to cable services and video services; to create the 'Consumer Choice for Television Act'; to provide guidelines for cable services and video services; to provide for certificate of franchise authority to be distributed by the secretary of state; to provide for franchise fees associated with cable services or video services; to provide for franchise fee audits and dispute resolutions; to provide for the distribution of these fees; to provide for a prohibition against build-out requirements; to authorize a local governmental subdivision to regulate a certificate holder; to prohibit discrimination with regard to cable services or video services; to provide for public, educational, and governmental access programming streams and support; to provide for effect on local franchise agreements; to provide for a prohibition of in-kind contributions or grants; to provide for customer service standards; to provide for emergency alert services; to provide for indemnity; and to provide for related matters; and

WHEREAS, pursuant to Act No. 433, R.S. 45:1362D provides that "... the Legislature of Louisiana intends that the Chapter occupy the entire field of cable and video service franchising regulation in the state of Louisiana and, **except as provided herein, shall preempt** any ordinance, resolution, or similar matter adopted by a local governmental subdivision that purports to address cable or video service franchising or regulation. This Chapter is enacted pursuant to the police powers ultimately reserved to the state by Article VI, Section 9 of the Constitution of Louisiana; and

WHEREAS, said Act provides for the issuance of a certificate of franchise authority by the secretary of state, which shall be effective thirty days after issuance. Said certificate grants the certificate holder with authority to provide cable service or video service in the specified local governmental subdivision, to construct facilities along and over the public roads or public works or public rights of way and along and parallel to any of the railroads and waters in the state whether owned, maintained, or provided by a local governmental subdivision or the state in the delivery of that service, subject to the laws of this state, including the lawful exercise of police powers of the local governmental subdivisions in which the service is delivered; and

WHEREAS, R.S. 45:1363(9) defines an "Incumbent service provider" to mean any cable service provider or video service provider providing cable service or video service in a particular municipality or unincorporated area of a parish on the effective date of this Chapter. And, while R.S. 45:1365A provides that any incumbent service provider is not subject to nor may it avail itself of the state-issued certificate of franchise authority until the franchise expires, subsequent provisions allow for the issuance of a state franchise certificate under the following circumstances: The filing of a statement of termination in the form of an affidavit with the secretary of state setting forth a mutually agreed upon date to terminate the existing

franchise set by both the local governmental subdivision issuing the existing franchise and the incumbent service provider subject to the existing franchise; The expiration, prior to renewal or extension, of its existing franchise; Termination of its existing franchise, as provided in Subsection B of this Section; and

WHEREAS, Subsection B of R.S. 45:1365 allows any incumbent service provider the option of terminating an existing franchise previously issued by a local governmental subdivision and to offer cable service or video service in such local governmental subdivision under a certificate of state franchise issued by the secretary of state. However, the incumbent service provider shall remain, under the terms and conditions of the terminated franchise, subject to and obligated for any indebtedness, liability, or obligation that is accrued, due, and owing to a local governmental subdivision at the time the incumbent service provider terminates the existing franchise previously issued by said local governmental subdivision, and shall remain subject to the contractual rights, duties, and obligations incurred by the incumbent service provider under the terms and conditions of the terminated local franchise that are owed to any private person, including a subscriber; and

WHEREAS, R.S. 45:1366A authorizes a local governmental subdivision to adopt an ordinance requiring the holder of a state-issued certificate of franchise authority to pay a franchise fee not to exceed five (5%) per cent of the holder's gross revenues. Further, R.S. 45:1370B authorizes a local governmental subdivision to adopt an ordinance requiring all holders of a state-issued certificate of franchise authority to pay public, educational, and governmental (PEG) access support in an amount up to one-half percent of gross revenues; and

WHEREAS, R.S. 45:1369 provides in pertinent part as follows: A. Not later than one hundred twenty days after a request by a local governmental subdivision, the holder of a certificate shall provide the local governmental subdivision in which it provides cable service or video service with capacity in its network to allow public, educational, and governmental (PEG) access programming streams or channels for noncommercial programming consistent with this Section. B.(1) The holder of a certificate shall designate a sufficient amount of capability on its cable system or wireline facilities used to distribute video programming services to allow for the provision of a comparable number of PEG access programming streams or channels a local governmental subdivision has activated under the franchise agreement of the incumbent service provider with the most subscribers in such local governmental subdivision as of the effective date of this Chapter.

THE PARISH OF ST. TAMMANY HEREBY ORDAINS that, in accordance with the provisions of Act No. 433 of the Thirty-Fourth Regular Session of the Louisiana Legislature, adopted June 21, 2008, and Chapter 10-A of Title 45 of the Louisiana Revised Statutes of 1950, particularly R.S. 45:1361 through 1378, the following requirements shall be applicable to an incumbent service provider and the holder of a state-issued certificate of franchise authority to provide cable service or video service in unincorporated St. Tammany Parish:

1) The holder of a state-issued Certificate of Franchise Authority to provide cable service or video service in unincorporated St. Tammany Parish is authorized to construct facilities along and over the public roads or public works or public rights of way and along and parallel to any of the railroads and waters in the state whether owned, maintained, or provided by St. Tammany Parish or the state in the delivery of that service, subject to the laws of this state, including the lawful exercise of police powers of the governing authority of St. Tammany Parish.

2) An incumbent service provider and the governing authority of St. Tammany Parish may agree to terminate the existing franchise upon a mutually agreed upon date to terminate said franchise. In such event, the mutually agreed upon termination shall not be construed to release the incumbent service provider from any contractual rights, duties, and obligations incurred by the incumbent

service provider under the terms and conditions of the terminated franchise that are owed to any private person, including a subscriber.

3) In the event that an incumbent service provider exercises the option of terminating an existing franchise previously issued to it by St. Tammany Parish, other than by mutual agreement of the provider and the Parish, and to offer cable service or video service in St. Tammany Parish under a certificate of state franchise issued by the secretary of state, the incumbent service provider shall remain, under the terms and conditions of the terminated franchise, subject to and obligated for any indebtedness, liability, or obligation that is accrued, due, and owing to St. Tammany Parish at the time the incumbent service provider terminates the existing franchise previously issued by said Parish, and shall remain subject to the contractual rights, duties, and obligations incurred by the incumbent service provider under the terms and conditions of the terminated local franchise that are owed to any private person, including a subscriber.

4) A holder of a state-issued Certificate of Franchise Authority to provide cable service or video service in unincorporated St. Tammany Parish shall pay St. Tammany Parish a franchise fee of five (5%) per cent of the holder's gross revenues as defined by R.S. 45:1363(8) and authorized by R.S. 45:1366. The time that the payment is due, the amount of the payment due and the supporting statement are to be governed by the provisions of §1366.

5) A holder of a state-issued Certificate of Franchise Authority shall provide two public, educational or governmental access (PEG) channels to St. Tammany Parish residents. The St. Tammany Parish Government Access channel shall be carried in the basic subscription service package or tier on its existing channel number.

6) A holder of a state-issued Certificate of Franchise Authority shall pay PEG access support to St. Tammany Parish in the amount of one-half ($\frac{1}{2}\%$) per cent of gross revenues as provided for in R.S. 45:1370. All payments made under this provision are paid in accordance with 47 U.S.C. 531, 541(a)(4)(B), and 542(g)(2)(C) and shall be used by St. Tammany Parish as allowed by federal law only to support the capital costs incurred for the construction and operation of PEG access programming stream or channel content and facilities.

7) In accordance with the provisions of R.S. 45:1364, any person or entity seeking to provide cable service or video service in unincorporated St. Tammany Parish after the effective date of Act No. 433 shall simultaneously provide St. Tammany Parish with a copy of the application filed with the secretary of state for a state-issued certificate of franchise authority. An incumbent service provider exercising its termination option shall file a statement of termination with the secretary of state in the form of an affidavit containing the information required by R.S. 45:1364(B) and submit copies of such filing to St. Tammany Parish. Any documents that are required by this ordinance and/or state statute to be provided to St. Tammany Parish shall be delivered to the office of the Parish President, either by hand-delivery or certified mail.

8) Upon the filing of a copy of the application or statement of termination as provided for in paragraph (7) herein above, a copy of this ordinance shall be provided to the holder of a state-issued certificate of franchise authority, which shall serve as notice of this ordinance for all purposes set forth in Act No. 433, including notice of the established franchise fee and of the Parish's request that the holder of a certificate provide St. Tammany Parish with capacity in its network to allow PEG access programming consistent with this ordinance.

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CONFLICTS: Recognizing that the Legislature of Louisiana intends that Chapter 10-A of Title 45 occupy the entire field of cable and video service franchising regulation in the state of Louisiana and, except as provided therein, shall preempt any ordinance, resolution, or similar matter adopted by a local governmental subdivision that purports to address cable or video service franchising or regulation, in the event of a conflict between any provision of this ordinance and the provisions of Act No. 433, R.S. 45:1361 through 1378, the provisions of Act. No. 433 shall be controlling.

REPEAL: All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SEVERABILITY: If any provision of this Ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein which can be given effect without the invalid provision and to this end the provisions of this Ordinance are hereby declared to be severable.

EFFECTIVE DATE: This Ordinance shall become effective fifteen (15) days after adoption.

MOVED FOR ADOPTION BY: _____, SECONDED BY: _____

WHEREUPON THIS ORDINANCE WAS SUBMITTED TO A VOTE AND RESULTED IN THE FOLLOWING:

YEAS:

NAYS:

ABSTAIN:

ABSENT:

THIS ORDINANCE WAS DECLARED ADOPTED AT A REGULAR MEETING OF THE PARISH COUNCIL ON THE _____ DAY OF _____ 2008; AND BECOMES ORDINANCE COUNCIL SERIES NO. 08-.

JERRY BINDER, COUNCIL CHAIRMAN

ATTEST:

THERESA L. FORD, COUNCIL CLERK

KEVIN DAVIS, PARISH PRESIDENT

Published introduction: AUGUST 28, 2008

Published adoption on: _____, 2008

Delivered to Parish President: _____, 2008 @ _____

Returned to Council Clerk: _____, 2008