

CHAPTER 111

CABLE TELEVISION FRANCHISE REGULATIONS

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111.01 INTENT. The City of Asbury, Iowa, pursuant to Applicable Laws, is authorized to grant one (1) or more nonexclusive Franchises to construct, operate, maintain and reconstruct Cable Television Systems within the City limits. The City Council finds that the development of Cable Systems has the potential of having great benefit and impact upon the residents of the City. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such Persons as the City shall designate. It is the intent of this Chapter and subsequent amendments to provide for and specify the means to attain the best possible Cable Service to the public and any Franchises issued pursuant to this Chapter shall be deemed to include this finding as an integral part thereof.

111.02 DEFINITIONS. For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. 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. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

1. "Applicable Laws" means any law, statute, ordinance, rule, regulation, code, license, certificate, Franchise, permit, writ, ruling,

award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any Governmental Authority.

2. “Basic Cable Service” means any Service tier which includes the lawful retransmission of local television broadcast signals and any PEG access programming required by the Franchise to be carried on the basic tier.

3. “Cable Act” means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-395 and as the same may, from time to time, be amended.

4. “Cable Service” or “Service” means:

A. The one-way transmission to Subscribers of Video Programming or other programming service; and

B. Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.

5. “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

A. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

B. a facility that serves only Subscribers without using any public rights-of-way;

C. a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; or

D. an open video system that complies with 47 U.S.C. § 573; or

E. any facilities of any electric utility used solely for operating its electric utility system.

6. “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC.

7. “Council” means the City Council of the City of Asbury, Iowa.

8. “Drop” means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.

9. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

10. “Franchise” means an initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a Cable System.

11. “Franchise Agreement” means a Franchise granted pursuant to this Chapter containing the specific provisions of the Franchise granted, including references, specifications, requirements and other related matters.

12. “Franchise Fee” means any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services); (ii) capital costs which are required by the Franchise Agreement to be incurred by the Grantee for PEG Access Facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

13. “Governmental Authority” means any Court or other federal, State, county, municipal or other governmental department, commission, board, agency or instrumentality.

14. “Grantee” means any Person receiving a Franchise pursuant to this Chapter and its agents, employees, officers, designees, or any lawful successor, transferee or assignee.

15. “Grantor” or “City” means the City of Asbury, Iowa, as represented by the Council or any delegate acting within the scope of its jurisdiction.

16. “Gross Revenues” means all cash, credit, or compensation of any kind or nature received directly or indirectly by the Grantee, arising from or attributable, directly or indirectly, to the sale of Cable Service by the Grantee within the City or in any way derived from the operation of its System within the City, including, but not limited to, monthly fees charged to Subscribers for Basic Cable Service; monthly fees charged to Subscribers for any optional service; monthly fees charged to Subscribers for any tier of service other than Basic Cable Service; Installation, disconnection and reconnection fees; leased Channel fees; fees, payments or other compensation received from programmers; converter rentals or sales; studio rental, production equipment and personnel fees; local advertising revenues; revenues from home shopping Channels; and revenues from the sale, exchange or cablecast of any programming developed on or for community service Channels. Gross Revenues shall be the basis for computing the Franchise Fees imposed pursuant to Section 111.19 hereof. Franchise Fees paid to the City are not to be deducted from the total Gross Revenues figure on which Franchise Fees are paid. There shall be no deductions from Gross Revenues for uncollected amounts or any other items unless specifically authorized herein.

17. “Initial Service Area” means the area of the City which will receive Cable Service initially, as set forth in any Franchise Agreement.

18. “Installation” means the connection of the System to Subscribers’ terminals, and the provision of Cable Service.

19. “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours at least one night per week and/or some weekend hours.

20. “Normal Operating Conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee 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 Grantee 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 System.

21. “Person” means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for profit or not-for-profit.

22. “Public, Educational or Government Access Facilities” or “PEG Access Facilities” means:

23. Channel capacity designated for public, educational or governmental use; and

24. Facilities and equipment for the use of such Channel capacity.

25. “Section” means any Section, subsection or provision of this Chapter.

26. “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in the Franchise Agreement.

27. “Service Interruption” means the loss of audio or video on one or more Cable Channels.

28. “State” means the State of Iowa.

29. “Street” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others or are dedicated for compatible use by utilities and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the Grantor shall permit to be included within the definition of Street from time to time.

30. “Subscriber” means any Person who or which lawfully elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with the Cable System whether or not a fee is paid for such service.

31. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

111.03 FRANCHISE TO INSTALL AND OPERATE. A Franchise granted by the City under the provisions of this Chapter shall encompass the following purposes:

1. To engage in the business of providing Cable Service to Subscribers within the Service Area.

2. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain and
3. Retain cables, lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a Cable System in, on, over, under, upon, along and across Streets within the Service Area.
4. To maintain and operate said Franchise properties for the origination, reception, transmission, amplification and distribution of television and radio signals for the delivery of Cable Services.
5. To set forth the obligations of a Grantee under the Franchise Agreement.

111.04 FRANCHISE REQUIRED. It shall be unlawful for any Person, other than the City, to construct, install or operate a Cable System in, the City in, on, over, under, upon, along or across any Street without a Franchise properly granted pursuant to the provisions of this Chapter.

111.05 TERM OF THE FRANCHISE.

1. A Franchise granted hereunder shall be for the term established in the Franchise Agreement.
2. A Franchise granted hereunder may be renewed upon application by the Grantee pursuant to the provisions of this Chapter and Applicable Laws.

111.06 FRANCHISE TERRITORY. Any Franchise granted pursuant to this Chapter shall be valid within the Service Area.

111.07 FEDERAL, STATE AND CITY JURISDICTION.

1. This Chapter shall be construed in a manner consistent with Applicable Laws.
2. In the event that the State or Federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, Grantor may, if it so elected, adopt rules and regulations necessary for the health, safety and welfare of residents to the extent permitted by Applicable Laws.
3. This Chapter shall apply to all Franchises granted or renewed after the effective date of this Chapter. This Chapter shall further apply to the extent permitted by Applicable Laws to all existing Franchises granted prior to the effective date of this Chapter.

4. The rights of all Grantees are subject to the policing powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All Grantees shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power.

5. No Grantee shall be relieved of its obligation to comply with any of the provisions of this Chapter or any Franchise granted pursuant to this Chapter by reason of any failure of the City to enforce prompt compliance.

6. This Chapter and any Franchise granted pursuant to this Chapter shall be construed and enforced in accordance with the substantive laws of the City, State of Iowa and applicable federal laws, including the Cable Act.

111.08 FRANCHISE NON-TRANSFERABLE.

1. Grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the Franchise and/or Cable System or any of the rights or privileges granted by the Franchise, without the prior written consent of the Council and then only upon such reasonable terms and conditions as may be prescribed by the Council with respect to the proposed transferee's legal, technical and financial qualifications and compliance with any Franchise granted hereunder, which consent shall not be unreasonably denied or delayed. No such consent shall be required; however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness. Any attempt to sell, assign or transfer the Franchise and/or Cable System or Grantee's rights therein without the prior written consent of the Council shall be grounds for termination of the Franchise pursuant to Section 111.29 hereof and the applicable provisions of any Franchise Agreement.

2. Without limiting the nature of the events requiring the Council's approval under this Section, the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this Section: (i) the sale, assignment or other transfer of all or a majority of Grantee's assets or the assets comprising the Cable System to any Person provided, however, that no consent shall be required if such sale, assignment or transfer is to an entity under common control with the Grantee so long as Grantee and such entity remain jointly and severally liable for the obligations of the Grantee hereunder; (ii) the merger of the Grantee with or into another Person;

(iii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee or any of its parents by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in Grantee; (iv) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee or any of its parents so as to create a new Controlling Interest in Grantee; and (v) the entry by the Grantee, into an agreement with respect to the management or operation of the Grantee, any of Grantee's parents and/or the System or, the subsequent amendment thereof. The term "Controlling Interest" as used herein is not limited to majority equity ownership of the Grantee, but also includes actual working control over the Grantee, any parent of Grantee and/or the System in whatever manner exercised.

3. Except as provided below, no Grantee may sell or otherwise transfer ownership in a Franchise and/or Cable System within a thirty-six (36) month period following either the acquisition or initial construction of said System by Grantee. In the case of a sale of multiple Systems, if the terms of the sale require the buyer to subsequently transfer ownership of one (1) or more such Systems to one or more third parties, such transfer shall be considered a part of the initial transaction. The above-described thirty-six (36) month holding period shall not apply to (1) any transfer of ownership interest in any Franchise and/or Cable System which is not subject to federal income tax liability; (2) any sale required by operation of any law or any act of any Governmental Authority; or (3) any sale, assignment or other transfer to one or more purchasers, assignees or transferees controlled by, controlling or under common control with, the seller, assignor or transferor.

4. In the case of any sale or transfer of ownership of any Franchise and/or Cable System after the thirty-six (36) month period following the acquisition or initial construction of such System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in this Chapter and Applicable Laws and such other reasonable information as the City may request with respect to the legal, technical and financial qualifications of the proposed transferee and/or compliance with any Franchise granted hereunder, in its sole discretion, may request. If the City fails to render a final decision and the request within one hundred twenty (120) days from receipt by the City of all legally required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

5. Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets

comprising the Cable System of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said property and assets. Such notification shall be considered by Grantor as notice that a change in control or ownership of the Franchise has taken place and, subject to Applicable Laws, the provisions under this Section governing the consent of Grantor to such change in control or ownership shall apply.

6. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, Grantor may inquire into the legal, technical and financial qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in any such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to Grantor, which application shall include the information required under this Chapter and Applicable Laws. The transferee shall be required to establish to the satisfaction of the City that it possesses the legal, technical and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of the Franchise. If, after considering the legal, technical, and financial character qualifications of the transferee and determining that they are satisfactory, the Grantor finds that such transfer is acceptable, the Grantor shall permit such transfer and assignment of the rights and obligations of such Franchise as may be in the public interest. The consent of the Grantor to such transfer shall not be unreasonably denied.

7. Any financial institution having a security interest in any and all of the property and assets of Grantee as security for any loan made to Grantee or any of its affiliates for the construction and/or operation of the Cable System shall notify the Grantor that it, or its designee satisfactory to the Grantor, intends to take control of and operate the Cable System, in the event of a default in the payment or performance of the debts, liabilities or obligations of Grantee or its affiliates to such financial institution. Further, said financial institution shall also submit a plan to Grantor for such operation of the System within thirty (30) days of assuming such control that will insure continued service and compliance with all Franchise requirements during the term the financial institution or its designee exercises control over the System. The financial institution or its designee shall not exercise control over the System for a period exceeding one (1) year unless extended by the Grantor in its discretion and during said period of time it shall have the right to petition the Grantor to transfer the Franchise to another Grantee.

111.09 PURCHASE BY CITY UPON EXPIRATION OR REVOCATION. At the expiration, cancellation, revocation or termination of any Franchise Agreement, the City shall have the option to purchase or otherwise acquire and hold the Cable System upon the payment of the fair market value of the Cable System to Grantee, determined on the basis of the going concern value of the Cable System (exclusive of any value attributable to the Franchise itself).

111.10 EMERGENCY USE. In the case of any emergency or disaster, Grantee shall, upon request of the City or emergency management personnel, make its Cable System and related facilities available to the City for emergency use. The City shall hold Grantee harmless for claims arising out of the City's emergency use of the Cable System, including, but not limited to reasonable attorney's fees and costs.

111.11 GEOGRAPHICAL COVERAGE.

1. Grantee shall design, construct and maintain the Cable System to have the capability to pass every dwelling unit in the Service Area, subject to any Service Area line extension requirements of the Franchise Agreement.
2. After Service has been established by activating trunk and/or distribution cables for any Service Area, Grantee shall provide Cable Service to any requesting Subscriber within that Service Area within thirty (30) days from the date of request, provided that the Grantee is able to secure all rights-of-way necessary to extend service to such Subscriber within such thirty (30) day period on reasonable terms and conditions.

111.12 NONEXCLUSIVE FRANCHISE. Any Franchise granted under this Chapter shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable System or any component thereof, as it deems appropriate, subject to Applicable Laws. The Grantor also specifically reserves the right to operate a municipal Cable System pursuant to Applicable Laws and shall not be required to grant a Franchise to the City for the operation of a municipal Cable System unless specifically required by Applicable Laws.

111.13 MULTIPLE FRANCHISES.

1. Grantor may grant one (1) or more Franchises for a Service Area. Grantor may, in its sole discretion, limit the number of Franchises granted, based upon, but not necessarily limited to, the requirements of Applicable Laws and specific local considerations; such as:

- A. The capacity of the public rights-of-way to accommodate multiple communications cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewage.
 - B. The impact on the City of having multiple Franchises.
 - C. The disadvantages that may result from Cable System competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.
 - D. The financial capabilities of the applicant and its guaranteed commitment to make necessary investment to erect, maintain and operate the proposed System for the duration of the Franchise term.
2. Each Grantee awarded a Franchise to serve the entire City shall offer Service to all residences in the City, in accordance with construction and service schedules mutually agreed upon between Grantor and Grantee, and consistent with Applicable Laws.
 3. Developers of new residential housing with underground utilities shall provide conduit to accommodate cables for at least two (2) Cable Systems in accordance with the provisions of Section 111.20(4).
 4. Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.
 5. Any additional Franchise granted by the City to provide Cable Service in a part of the City in which a Franchise has already been granted and where an existing Grantee is providing service shall require the new Grantee to provide service throughout its Service Area within a reasonable time and in a sequence which does not discriminate against lower income residents.

111.14 FRANCHISE APPLICATIONS. Any Person other than the City, desiring an initial Franchise for a Cable System shall file an application with the City. A reasonable nonrefundable application fee in an amount established by the City shall, accompany the initial application. Such application fee shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 111.19 hereof and applicable provisions of a Franchise Agreement, or (ii) part of the

Franchise Fees to be paid to the City by Grantee pursuant to Section 1.20 hereof and applicable provisions of a Franchise Agreement. An application for an initial Franchise for a Cable System shall be in a form reasonably acceptable to Grantor and shall contain, where applicable:

1. A statement as to the proposed Service Area.
2. A resume of prior history of applicant, including the legal, technical and financial expertise of applicant in the cable television field.
3. A list of the general and limited partners of the applicant, if a partnership, or the shareholders, if a corporation.
4. The percentage ownership of the applicant of each of its partners, shareholders or other equity owners.
5. A list of officers, directors and managing employees of applicant or its general partner, as applicable, together with a description of the background of each such Person.
6. The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant.
7. A current financial statement of applicant verified by an audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the City;
8. Proposed construction and service schedule.
9. Any additional reasonable information that the City deems applicable.

111.15 CONSIDERATION OF INITIAL APPLICATIONS. Upon receipt of any application for an initial Franchise, the City shall prepare a report and make its recommendations respecting such application to the City Council. A public hearing shall be set prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions. The Council may grant one (1) or more initial Franchises, or may decline to grant any Franchise.

111.16 FRANCHISE RENEWAL. Franchise renewals shall be in accordance with Applicable Laws. Grantor and Grantee, by mutual consent; may enter into renewal negotiations at any time during the term of the Franchise.

111.17 CONSUMER PROTECTION AND SERVICE STANDARDS.

Except as otherwise provided in the Franchise Agreement, Grantee shall comply with the following consumer protection standards under Normal Operating Conditions:

1. Cable System office hours and telephone availability:
 - A. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
 - (1) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - (2) 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 must be responded to by a trained Grantee representative on the next business day.
 - B. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90%) percent of the time under Normal Operating Conditions, measured on a quarterly basis.
 - C. The Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 - D. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 - E. Customer service center and bill payment locations will be open at least during Normal Business Hours.
2. Installations, outages and service calls. Under normal Operating Conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
 - A. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

B. Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee 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 (4) hour time block during Normal Business Hours. (The Grantee may schedule service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

D. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

E. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

3. Communications between Grantee and Subscribers:

A. Notifications to Subscribers:

(1) The Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

- a. Products and services offered;
- b. Prices and options for programming services and conditions of subscription to programming and other services;
- c. Installation and service maintenance policies;
- d. Instructions on how to use the Cable Service;
- e. Channel positions of the programming carried on the System; and
- f. Billing and complaint procedures, including the address and telephone number of the Grantee's office within the Service Area.

(2) Customers will be notified of any changes in rates, programming services or Channel positions as soon as possible through announcements on the Cable System and in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by Paragraph A of this subsection.

B. Billing:

(1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

C. Refunds: Refund checks will be issued promptly, but no later than either:

(1) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(2) The return of the equipment supplied by the Grantee if service is terminated.

D. Credits: Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

111.18 RATE REGULATION. The City reserves the right to regulate rates for Basic Cable Service and any other service offered over the Cable System pursuant to Applicable Laws. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the FCC at 47 C.F.R., Part 76.900, Subpart N, as the same may be amended from time to time. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N, as the same may be amended from time to time.

111.19 FRANCHISE FEE.

1. Following the issuance and acceptance of a Franchise, the Grantee shall pay to the Grantor a Franchise Fee in the amount set forth in the Franchise Agreement.

2. The Grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, certified by Certified Public Accountant, reflecting the total amounts of Gross Revenues and all payments, and computations of the Franchise Fee for the previous calendar year. Upon fifteen (15) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records. If such audit indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable costs of such an audit and shall remit to Grantor all applicable Franchise Fees due and payable together with interest thereon at the lesser of the maximum rate permitted by Applicable Laws or eighteen percent (18%) per annum.

3. Except as otherwise provided by law, no acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a Franchise Fee under this Chapter or any Franchise Agreement or for the performance of any other obligation of the Grantee.

4. In the event that any Franchise Fee payment or recomputed amount is not made on or before the dates specified in the Franchise Agreement, Grantee shall pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the lesser of the maximum rate permitted by Applicable Laws or eighteen percent (18%) per annum during the period for which payment was due.

5. Franchise Fee payments shall be made in accordance with the schedule indicated in the Franchise Agreement.

111.20 DESIGN AND CONSTRUCTION REQUIREMENTS.

1. Grantee shall not construct any Cable System facilities until Grantee has secured the necessary permits from Grantor, or other applicable Governmental Authorities.

2. In those areas of the City where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

3. In those areas of the City where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall construct, operate and

maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground closures.

4. In new residential developments in which all the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements:

A. The developer shall be responsible for contacting and surveying all Grantees to ascertain which Grantees desire (or, pursuant to the terms and provisions of this Chapter and any Franchise Agreement, may be required) to provide Cable Service to that development. The developer may establish a reasonable deadline to receive responses from Grantees. The final development map shall indicate the Grantees which have agreed to serve the development.

B. If one (1) or two (2) Grantees wish to provide Service within all or part of the development, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared basis.

C. The developer shall provide at least ten (10) business days notice of the date that utility trenches will be open to the Grantees that have agreed to serve the development. When the trenches are open, such Grantees shall have two (2) business days to begin the Installation of their cables, and five (5) business days after beginning Installation to complete Installation or such longer period if agreed to by Grantee and developer.

D. The final development map shall not be approved until the developer submits evidence that:

(1) It has notified each Grantee that underground utility trenches are to open as of an estimated date, and that each Grantee will be allowed access to such trenches, including trenches from proposed Streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

(2) It has received a written notification from each Grantee that the Grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and Grantee, or has received no reply from a Grantee within ten (10) days after its notification to such Grantee, in which case the Grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.

E. Sharing the joint utilities trench shall be subject to compliance with State regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating Grantee(s). With the concurrence of the developer, the affected utilities and the Grantees, alternative installation procedures, such as the use of deeper trenches, may be utilized, subject to the requirements of Applicable Laws.

F. Any Grantee wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs and shall repair all property to the condition which existed prior to such trenching.

111.21 TECHNICAL STANDARDS.

1. The Grantee shall construct, install, operate and maintain its System in a manner consistent with all Applicable Laws and the FCC technical standards, and any standards set forth in its Franchise Agreement. In addition, the Grantee shall provide to the Grantor, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC standards and guidelines.
2. Repeated and verified failure to maintain specified technical standards shall constitute a material breach of the Franchise entitling the City to utilize the procedures of Section 111.29 hereof.
3. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended,, as well as all other Applicable Laws.
4. All Installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as may from time to time be amended.
5. Antennae and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Laws.
6. All of Grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, communications cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in

accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the City may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

7. Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

111.22 TRIMMING OF TREES. Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Streets 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 Grantee. City representatives shall have authority to supervise and approve all trimming of trees conducted by Grantee.

111.23 USE OF GRANTEE FACILITIES. The City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of Grantee, any wires and fixtures desired by the City (excluding wires or fixtures used for the provision of a cable television system) to the extent that such installation and maintenance does not interfere with existing or future operations of Grantee.

111.24 PROGRAMMING DECISIONS. All programming decisions shall be at the sole discretion of Grantee taking into consideration Applicable Laws, in, particular Sections 624 and 625 of the Cable Act.

111.25 INDEMNIFICATION. Grantee shall indemnify, defend and hold the City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, losses, expenses (including reasonable attorneys' fees) and costs of any nature that any of the Indemnified Parties may at any time, directly or indirectly, suffer, sustain or incur arising out of, based upon or in any way connected with the grant of a Franchise to Grantee, the operation of Grantee's System and/or the acts and/or omissions of Grantee or its agents or employees, whether or not pursuant to the Franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark, patent, or any other right of any Person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Chapter or any Franchise Agreement, but shall

exclude any claim or action arising out of the acts or omissions of the Indemnified Parties or related to any City programming or other access programming for which the Grantee is not legally responsible.

111.26 INSURANCE. Within sixty (60) days following the grant of a Franchise, the Grantee shall obtain, pay all premiums for the following insurance policies:

1. A general comprehensive liability insurance policy insuring the Grantee and naming the Indemnified Parties as an additional insured from any and all claims by any Person whatsoever on account of injury to or death of a Person or Persons occasioned by the operations of the Grantee under any Franchise granted hereunder, or alleged to have been so caused or occurred with a minimum coverage of One Million and No/100 Dollars (\$1,000,000) for personal injury or death of one Person, and Three Million and No/100 Dollars (\$3,000,000) for personal injury or death of any two (2) or more Persons in any one occurrence.
2. Property damage insurance for property damage occasioned by the operation of Grantee under any Franchise granted pursuant to this Chapter, or alleged to have been so caused or occurred, with minimum coverage of One Million and No/100 Dollars (\$1,000,000) for property damage to the property of any one Person and Three Million and No/100 Dollars (\$3,000,000) for property damage to the property of two (2) or more Persons in any one occurrence.
3. Workers Compensation Insurance as provided by Applicable Laws.
4. All insurance policies called for herein shall be in a form satisfactory to the City with a company licensed to do business in the State of Iowa with a rating by A.M. Best & Co. of not less than "A-," and shall require thirty (30) days written notice of any cancellation to both the City and the Grantee. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Grantee of any notice of cancellation.
5. If Grantee sells or transfers the Cable System, or in the event of expiration, termination or revocation of a Franchise, insurance tail coverage shall be purchased and filed with the City for the then applicable amounts, providing coverage for the time periods according to applicable statutes of limitation, insurance for any issues attributable to the period Grantee held its Franchise.

6. It shall be the obligation of Grantee to promptly notify the City of any pending or threatened litigation that would be likely to affect the Indemnified Parties.

111.27 RECORDS REQUIRED AND GRANTOR'S RIGHT TO INSPECT.

1. Grantee shall at all times maintain:
 - A. A full and complete set of plans, records and "as-built" maps showing the location of the Cable System installed or in use in the City, exclusive of Subscriber service Drops and equipment provided in Subscribers' homes.
 - B. If requested by Grantor, a summary of Service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such Service calls shall be submitted to the Grantor within thirty (30) days following its request in a form reasonably acceptable to the Grantor.
2. Upon reasonable notice, and during Normal Business Hours, Grantee shall permit examination by any duly authorized representative of the Grantor, of all Franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within or without the City, and all records relating to the Franchise, provided that such records are necessary to enable the Grantor to carry out its enforcement responsibilities under Applicable Laws, this Chapter and the Franchise Agreement. Grantee shall have the right to be present at any such examination.
3. The City shall also have the right to inspect, upon seventy-two (72) hours written notice, at any time during Normal Business Hours at Grantee's office, all books, records, maps, plans, revenue statements, service complaint logs, performance test results, records of request for service, and other like materials of Grantee as may be necessary to enable the Grantor to carry out its enforcement responsibilities under Applicable Laws, this Chapter and the Franchise Agreement.
4. Upon request, Grantee shall, within fourteen (14) days, provide Grantor a written list of all petitions, applications, communications and reports submitted by Grantee or on behalf of or relating to Grantee to the FCC, Securities and Exchange Commission, or any other Governmental Authority having jurisdiction with respect to any matters affecting the Cable System authorized pursuant to this Chapter and any Franchise granted hereunder. Such documents shall be provided by Grantee to Grantor within fourteen (14) days of Grantee's receipt of Grantor's written request.

111.28 ANNUAL REPORTS.

1. Grantee shall, within ninety (90) days of each calendar year end and upon written notice by the City, submit a written end of the year report to Grantor with respect to the preceding calendar year containing the following information:
 - A. A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the Cable System, including but not limited to, services commenced or discontinued during the reporting year;
 - B. A list of Grantee's officers, members of its board of directors, and other principals of Grantee;
 - C. Information as to the number of Subscribers, additional television outlets (if a charge is assessed), and the number of basic and pay service Subscribers.
2. All public information and documents, except those required by law to be kept confidential, shall be available for public inspection in the Grantee's offices during Normal Business Hours.
3. All reports and records required under this Chapter shall be furnished at the sole expense of Grantee, except as otherwise provided in this Chapter or the Franchise agreement.

111.29 FRANCHISE VIOLATION. In the event Grantor believes that Grantee has breached or violated any material provision of this Chapter or a Franchise granted hereunder, Grantor shall act in accordance with the following procedures:

1. Grantor may notify Grantee, which notice shall be in writing, of the alleged violation or breach and demand that Grantee cure the same within a reasonable time, which shall not be less than ten (10) days in the case of an alleged failure of the Grantee to pay any sum or other amount due the Grantor under this Chapter or the Grantee's Franchise and thirty (30) days in all other cases.
2. If Grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the Grantor shall then give written notice of not less than fourteen (14) days of a public hearing to be held before the Council. Said notice shall specify in detail the violations or breaches alleged to have occurred. At the public hearing, the Council shall give the Grantee an opportunity to state its position on the matter as well as hear and consider other relevant evidence and

thereafter render findings and its decision. In the event the Council finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from Grantor and is not diligently proceeding to fully cure such violation or breach, the Council may revoke and terminate the Franchise or impose any other remedy permitted by the Franchise Agreement or Applicable Laws.

3. The Grantee may appeal such determination to an appropriate court. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Council. The Council may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

111.30 FORCE MAJEURE; GRANTEE'S INABILITY TO PERFORM.

In the event Grantee's performance of any of the terms, conditions or obligations required by this Chapter or a Franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of Grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires.

111.31 ABANDONMENT OR REMOVAL OF FRANCHISE PROPERTY.

1. In the event that the use of any property of Grantee within the Franchise Area or a portion thereof is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that property.

2. Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained in, on, under or over the Franchise Area. Unless such permission is granted or unless otherwise provided in this Chapter, the Grantee shall remove all abandoned facilities and equipment upon receipt of written notice from Grantor and shall restore any affected Street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation made by or on behalf of

Grantee and shall leave all streets and other public ways and places in a condition as near as reasonably possible to its condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. Grantor shall have the right to inspect and approve the condition of the streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Chapter and any security fund provided for in the Franchise Agreement shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

3. Upon abandonment of any Franchise property in place, the Grantee, if required by the Grantor, shall submit to Grantor a bill of sale and/or other an instrument, satisfactory in form and content to the Grantor, transferring to the Grantor the ownership of the Franchise property abandoned.

4. At the expiration of the term for which the Franchise is granted, or upon its earlier revocation or termination, as provided for herein and/or in the Franchise Agreement, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable Television System from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

5. Notwithstanding anything to the contrary set forth in this Chapter, the Grantee may, with the consent of the Grantor, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee.

111.32 EXTENDED OPERATION AND CONTINUITY OF SERVICES.

Upon the expiration, revocation or termination of the Franchise, the Grantor shall have discretion to permit and/or require Grantee to continue to operate the Cable System for a period of time not to exceed six (6) months from the date of such expiration, revocation or termination. Grantee shall continue to operate the System under the terms and conditions of this Chapter and the Franchise and to provide the regular Subscriber service and any and all of the Services that may be provided at that time.

111.33 RECEIVERSHIP AND FORECLOSURE.

1. A Franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under the Franchise and/or this Chapter or provided a plan for the remedy of such defaults and violations which is satisfactory to the Grantor; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise and this Chapter.

2. Subject to Applicable Laws, in the case of a foreclosure or other judicial sale of the Franchise property, or any material part thereof, Grantor may give notice of termination of any Franchise granted pursuant to this Chapter upon Grantee and the successful bidder at such sale, in which the event the Franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after such notice has been given, unless (1) Grantor shall have approved the transfer of the Franchise in accordance with the provisions of the Franchise and this Chapter; and (2) such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the Franchise.

111.34 RIGHTS RESERVED TO GRANTOR.

1. In addition to any rights specifically reserved to the Grantor by this Chapter, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the Franchise.

2. The Grantor shall have the right to waive any provision of the Franchise, except those required by Applicable Laws, if the Grantor, in its sole opinion, determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or the Subscribers. Waiver of any provision in one instance shall not be deemed a waiver of such provision subsequent

to such instance nor be deemed a waiver of any other provision of the Franchise unless the statement so recites.

111.35 RIGHTS OF INDIVIDUALS.

1. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, national origin, age, gender or sexual preference Grantee shall comply at all times with all other Applicable Laws, relating to nondiscrimination.

2. Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time.

3. Neither Grantee, nor any Person, agency, or entity shall, without the Subscriber's consent, tap or arrange for the tapping, of any cable, line, signal input device, or Subscriber outlet or receiver for any purpose

except routine maintenance of the System, legitimate business purposes associated with Grantee's business, and detection of unauthorized service.

4. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a Subscriber's or general citizen's right of privacy or other personal rights through the use of the System as such rights are delineated or defined by Applicable Laws. Grantee shall not, without lawful court order or other applicable valid legal authority, utilize the System's interactive two-way equipment or capability for unauthorized personal surveillance of any Subscriber or general citizen.

5. No cable line, wire, amplifier, converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the Subscriber's premises, other than in appropriate easements, without first securing any required consent. If a Subscriber requests service, permission to install upon Subscriber's property shall be presumed. Where a property owner or his or her predecessor was granted an easement including a public utility easement or a servitude to another and the servitude by its terms contemplates a use such as Grantee's intended use, Grantee shall not be required to receive written permission of the owner for the Installation of cable television equipment in such easement.

111.36 CONFLICTS. In the event of a conflict between any provision of this Chapter and a Franchise Agreement, the provisions of a Franchise Agreement shall control. Grantee expressly acknowledges and agrees that City shall have the right to amend this Chapter to protect the health, safety and welfare of the City and Grantee agrees to comply with such police power amendments.

111.37 SEVERABILITY. If any provision of this Chapter is held by any Governmental Authority of competent jurisdiction, to be invalid as conflicting with any Applicable Laws now or hereafter in effect, or is held by such Governmental Authority to be modified in any way in order to conform to the requirements of any such Applicable Laws, such provision shall be considered a separate, distinct, and independent part of this Chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such Applicable Laws are subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such laws, said provision shall thereupon return to full force and effect and shall thereafter be binding on

Grantor and Grantee, provided that Grantor shall give Grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

(Ch. 111 – Ord. 1-07 – Jan. 07 Supp.)

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