

## CHAPTER 112

# CABLE TELEVISION REGULATIONS

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**112.01 DEFINITIONS.** For use in this chapter, the following terms, phrases, words and derivations are defined:

1. “Annual gross revenues” means all revenues received by the Grantee, its affiliates or subsidiaries from and in connection with the operation of the cable television system in the City, and includes revenues from all sources including without limitation revenues from advertising, channel leasing, data transmission and per-program charges, microwave transmissions, and any other charges not specifically prohibited by the FCC or a court of competent jurisdiction, in addition to the subscriber’s monthly payments.
2. “Cable television system” means any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations or which is originated by itself and distributes such signals, by wire or cable, to subscribing members of the public who pay for such services.
3. “Channel” means the segment of the electromagnetic spectrum to which a source of television transmission is assigned.
4. “FCC” means the Federal Communications Commission, and any legally appointed or elected successor.
5. “Franchise” means the rights, privileges, and authority granted by the City to the Grantee under a franchise and includes all of the terms and conditions of this chapter.
6. “Franchise payment” includes all charges imposed for a franchise whether the object be regulation, revenue or one-time reimbursement of costs incurred by the City in the award of the franchise.
7. “Grantee” means the person granted a franchise by an election. When the context so requires, the term “grantee” means and includes the Grantee, its officers, agents, employees, servants and independent contractors thereof and all persons including, but not limited to, subsidiaries, parents, or affiliate companies, associations or organizations having any rights, powers, privileges, duties, liabilities or obligations, under this chapter, and under Chapter 111 (collectively called “the franchise”), and

also includes all persons having or claiming any title to or interest in the system, whether by reason of the franchise itself directly or by interest in a subsidiary, parent, or affiliate company, association or organization by any subcontract transfer, assignment or transfer resulting from a foreclosure of a mortgage security agreement, or whether otherwise arising or created.

8. "Property of the Grantee" means all property, real, personal or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.

9. "Public property" means all property, real, personal, or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

10. "Sale" includes any sale, exchange, barter or offer for sale.

11. "Service area" means that geographical area within the incorporated limits of the City.

12. "Street" includes all streets,, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights- of-way or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated by law.

13. "Subscriber" means any person receiving either "basic service" or "additional service" from the Grantee under the schedule of charges filed with and approved by the City.

**112.02 FRANCHISE REQUIRED.** No person shall construct, install, maintain or operate within any public property of the City, any equipment or facilities for the distribution of television signals or radio signals or other intelligence either analog or digital over a cable television system to any subscriber unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of State law and this chapter, and unless such franchise is in full force and effect.

**112.03 REVIEW OF QUALIFICATIONS.** Specific permission to operate a cable television system under the provisions of this chapter may be granted by the Council to any Grantee after a review of the legal, character, financial, technical qualifications and the adequacy and feasibility of the Grantee's construction arrangements and after the Council has approved the Grantee's qualifications as a part of a public proceeding affording due process.

**112.04 DURATION OF FRANCHISE.** Upon filing by the Grantee of the proper acceptance, the bond and the required insurance and security fund, the franchise shall take effect as provided herein and shall continue in full force and effect for a term of fifteen (15) years.

**112.05 SIGNIFICANCE OF FRANCHISE.**

1. Franchise Nonexclusive. Any franchise granted by the City shall not be exclusive and the City reserves the right to grant a similar franchise to any person, firm, company, corporation, or association at any time.

2. Franchise Amendable. The scope of any franchise granted by the City shall be deemed amendable from time to time to allow the Grantee to innovate and implement new services and developments; provided, however, no such services or

developments shall be implemented without the express prior approval of the Council, acting in accordance with State and Federal laws.

3. Privileges Must be Specified. No privilege or exemption shall be inferred from the granting of any franchise unless it is specifically prescribed. Nothing in this chapter shall be deemed to require the granting of a franchise when in the opinion of the Council it would not be in the public interest to do so.

4. Authority Granted. Any franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under streets, as defined in Section 112.01, which have been or may hereafter be dedicated and open to public use in the City, towers, antennas, poles, cables, electronic equipment, and other network appurtenances necessary for the operation of a cable television system in the City; subject to the requirements of Section 112.17.

5. Previous Rights Abandoned. A franchise granted hereunder shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled, or exercisable by a Grantee or any successor pertaining to the construction, operation, or maintenance of a cable communications system in the City. The acceptance of a franchise shall operate, as between Grantee and the City, as an abandonment of any and all such rights, privileges, powers, immunities, and authorities within the City. All construction, operation and maintenance by the Grantee of any cable system in the City shall be under the franchise and not under any other right, privilege, power, immunity, or authority.

6. Subject to Other Regulatory Agencies Rules and Regulations. The Grantee shall at all times during the life of any franchise granted be subject to all lawful exercise of the police power by the City and other duly authorized regulatory State and Federal bodies and shall comply with any and all ordinances which the City has adopted or shall adopt applying to the public generally and to other Grantees.

7. Pole Use Agreements Required. Any franchise granted shall not relieve the Grantee of any obligation involved in obtaining pole or conduit use agreements from the gas, electric and the telephone companies, or others maintaining poles or conduits in the streets of the City, whenever the Grantee finds it necessary to make use of said poles or conduits.

8. No Right of Property. Anything contained herein to the contrary notwithstanding, the award of any franchise shall not impart to the Grantee any right of property in or on City-owned property.

9. Franchise Binding. Anything contained herein to the contrary notwithstanding, all provisions of this chapter or any franchise granted by the City shall be binding upon the Grantee, its successors, lessees, or assignees.

#### **112.06 OPERATION OF FRANCHISE.**

1. Operations to be in Accordance With Rules. The Grantee shall maintain and operate its cable television system in accordance with the rules and regulations of the Federal Communications Commission, the statutes of the State and the ordinances of the City as they are incorporated herein or may be promulgated.

2. Interruption of Services Notification. The Grantee, whenever it is necessary to interrupt service over the cable television system for the purpose of network maintenance, alteration or repair, shall do so at such time as will cause the least

amount of inconvenience to the subscribers, and unless such interruption is unforeseen and immediately necessary, the Grantee shall give reasonable notice thereof to the affected subscribers.

3. **Business Office; Complaints.** Grantee shall maintain a business/ technical agent for the purpose of receiving, investigating, and responding to service complaints from subscribers. Grantee shall make every reasonable effort to resolve any and all complaints to the satisfaction of the subscriber by providing a toll-free telephone service to its main office, available 24 hours a day and checked after office hours by technicians. Grantee's service representatives shall make every effort to dispatch service to the City within one (1) hour of subscriber's notification. Upon receipt by it of any service complaint, the City will forward a copy to the Grantee or may take the question up by correspondence with the Grantee. Within such time as may be prescribed by the City, Grantee will be called upon to satisfy the complaint or advise the City of its refusal or inability to do so. If Grantee satisfies the complaint, it shall so notify the City giving particulars of the action taken. The City will forward a copy of Grantee's notice of satisfaction to the complainant. If Grantee refuses or is unable to satisfy the complaint, it shall so notify the City, and the City will forward a copy of such notice to the complainant, with a statement of the procedure to be followed to further prosecute the complaint. When a complaint has not been satisfied, the complainant may file a formal complaint with the Council in the form and manner to be specified thereby. The complaint to the Council must be filed within thirty (30) days from the date of the Grantee's notice of refusal or inability to satisfy the complaint. Upon receipt of a formal complaint, the Council, or its designated agent, shall ascertain the facts and shall have the power to enforce its decision, if against Grantee, by all actions hereunder, including the revocation of the franchise.

4. **Records.** Grantee shall keep complete records of accounts showing dates and payments received, and shall furnish an annual accounting by a certified public accountant to the City of the payment date as above provided. The Council shall have the right, power and authority to inspect the monthly service charge records of the Grantee at the premises of the Grantee during the business hours of any work day, or any other reasonable time and place providing Grantee is given no less than seven (7) days' notice.

5. **Service Rules.** Grantee shall have the right to prescribe service rules and regulations for the conduct of its business with its subscribers and service users, not inconsistent with the provisions of its franchise or with the rules and regulations of the Federal Communications Commission, and other applicable laws, rules and regulations. Grantee shall submit to the City all service agreements between Grantee and its subscribers and channel users, shall furnish the City a full schedule of its charges to be paid by subscribers before soliciting for subscribers within the City, and shall furnish the City any amendments or alterations in the service agreement or schedule of charges.

6. **Subscribers' Antennas.** The Grantee shall not require the removal or offer to remove or provide any inducements for removal of any potential or existing subscriber's antenna as a condition of provision of service.

7. **Sale or Service of Television Receivers.** Neither the Grantee, during the period of the franchise, nor any of its affiliated, subsidiary, parent organizations, officers or directors or stockholders holding five percent (5%) or more of outstanding stock of the Grantee, shall within the corporate limits of the City or within ten (10)

miles in any direction, directly or indirectly, engage in the retail sale, renting, leasing, or repairing of radio or television receivers or their appurtenances, nor shall they require any subscriber to utilize the services of any specific television/radio service business for the repair or maintenance of the subscribers' receivers, either radio or television. This section shall in no way prohibit the sale, rental or service of converters necessary to the operation of the cable television system by the Grantee.

8. Upgrading of Facilities, Equipment and Service. The Grantee shall upgrade its facilities, equipment and service as subscribers' demands dictate so that its network is as advanced as the current state of technology and reasonable economic feasibility will allow.

#### **112.07 RIGHTS RESERVED TO THE CITY.**

1. Right of Amendment Reserved to City. The City may from time to time, add to, modify or delete provisions of this chapter as it deems necessary in the exercise of its regulatory powers provided that such additions or revisions are reasonable and do not place an undue financial burden on the Grantee. Such additions or revisions shall be made only after a public hearing for which the Grantee shall have received written notice at least thirty (30) days prior to such hearing.

2. No Impairment of City's Rights. Nothing herein shall be deemed or construed to impair or affect, in any way to any extent, the right of the City to acquire the property of the Grantee through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing shall be construed to contract away, modify or abridge, either for a term or in perpetuity, the City's right to eminent domain.

3. Grantee Agrees to City's Rights. The City reserves every right and power which is required to be reserved or provided by an ordinance of the City, and the Grantee by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or powers which have been or will be enacted or established.

4. City's Right of Intervention. The City shall have the right to intervene and the Grantee specifically agrees by its acceptance of the franchise not to oppose such intervention by the City in any suit or proceeding to which the Grantee is a party.

5. Powers of the City. Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

6. City's Transfer of Functions. Any right or power in, or duty imposed upon any elected official, officer, employee, department, or board of the City shall be subject to transfer by the City to any other elected official, officer, employee, department or board.

7. City's Right of Inspection. The City reserves the right during the life of any franchise granted hereunder, to inspect and supervise all construction or installation work performed subject to the provisions of this chapter and to perform network measurements to insure compliance with the terms of this chapter.

8. City's Right of Acquisition. Upon expiration of the term of the franchise, or revocation, or other termination as provided by law, or upon receipt of application for approval of any assignment of the franchise or upon change de facto control, the City

shall have a right to purchase the cable television system as set forth in Section 112.10 herein.

9. City's Right of Network Installation. The City reserves the right, during the life any franchise granted hereunder, to install and maintain free of charge upon or in the poles and conduits of the Grantee any wire and pole fixtures necessary for municipal networks on the condition that such installation and maintenance thereof does not interfere with the operation of the Grantee.

**112.08 APPLICATIONS FOR FRANCHISE.** No franchise may be granted unless the applicant has successfully completed the application procedure in accordance with filing instructions promulgated by the City. All applicants must complete an application which shall include but not be limited to the following:

1. Name and Address of Applicant. The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer(s).
2. Description of Proposed Operation. A general description of the applicant's proposed operation, including but not limited to: business hours; operating staff; maintenance procedures beyond those required in this chapter; management and marketing staff complement and procedures; and, if available, the rules of operation for public access.
3. Signal Carriage. A statement of the television and radio services to be provided, including both off-the-air and locally originated signals.
4. Special Services. A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the Grantee for the public, municipal, and educational channels required to be made available by the provisions of this chapter.
5. Schedule of Charges. A statement of the applicant's proposed schedule of charges as set forth by the provisions of Section 112.14.
6. Corporate Organization. A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
7. Stockholders. A statement identifying the number of authorized outstanding shares of applicant's stock including a current list of the names and current addresses of its shareholders holding five percent (5%) or more of applicant's outstanding stock.
8. Intra-company Relationships. A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies.
9. Agreements and Understandings. A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of proposal submittal.
10. Financial Statement. A copy of the financial statements for the two (2) previous fiscal years.
11. Financial Projection. A five (5) year operations pro forma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber

penetration. Costs and revenues anticipated for voluntary services, if presented, shall be incorporated in the pro forma as required in this chapter, but shall be separately identified in the pro forma.

12. Financial Support. Suitable written evidence from a recognized financing institution, addressed to both the applicant and to the City, advising that the applicant's financial ability and planned operation have been analyzed by the institution and the institution prepared to make the required funds available to applicant if it is awarded a franchise. If the planned operation is to be internally financed, a board resolution shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct, install and operate the cable television system contemplated hereunder.

13. Construction Timetable. A description of system construction including the timetable for provision and extension of service to different parts of the City.

14. Technical Description. A technical description of the type of system proposed by the applicant, including but not limited to, system configuration (i.e. hub, dual cable), system capacity, two-way capability, etc.

15. Existing Franchises. A statement of existing franchises held by the applicant indicating when the franchises were issued and when the systems were constructed and the present state(s) of the system(s) in each respective governmental unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.

16. Convictions. A statement as to whether the applicant or any of its officers or directors or holders of five percent (5%) or more of its voting stock has in the past ten (10) years been convicted of or has charges pending for any crime other than a routine traffic offense and the disposition of each such case.

17. Operating Experience. A statement detailing the prior cable television experience of the applicant including that of the applicant's officers, management and staff to be associated where known forwarded with the proposed franchise.

18. Supplementation to Applications. The City reserves the right to require such supplementary, additional or other information that the City deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the City.

#### **112.09 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.**

1. Franchise Acceptance Procedures. Any franchise awarded hereunder and the rights, privileges and authority granted thereby shall take effect and be in force from and after the award thereof, provided that the Grantee shall file with the City the following:

- A. A statement by the Grantee of the unconditional acceptance of the franchise, and
- B. A certificate of insurance as set forth in Section 112.12, and
- C. A performance bond in the penal sum of \$50,000.00 as set forth in Section 112.13, and

D. Reimbursement to the City for the costs of publication of the franchise ordinance and the holding of the election connected therewith including any costs, legal and otherwise incurred by the City in relation to the franchise ordinance and related proceedings.

2. Grantee to Have no Recourse. The Grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or its regulation or from the City's exercise of its authority to grant additional franchises hereunder. This shall not include negligent acts of the City, its agent or employees which are performed outside the regulatory or franchise awarding authority hereunder.

3. Acceptance of Power and Authority to City. The Grantee expressly acknowledges that in accepting any franchise awarded hereunder, it has relied upon its own investigation and understanding of the power and authority of the City to grant the franchise.

4. Inducements Not Offered. The Grantee by acceptance of any franchise awarded hereunder acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or in behalf of the City concerning any term or condition of this franchise that is not included in this chapter.

5. Grantee Accepts Terms of Franchise. The Grantee acknowledges by the acceptance of this chapter and the franchise ordinance that it has carefully read its terms and conditions and it is willing to and does accept all the obligations of such terms and conditions and further agrees that it will, not prior to substantial completion of the system, set up as against the City the claim that any provision of this chapter as adopted, and any franchise granted hereunder is unreasonable, arbitrary, invalid or void.

6. Incorporation of Proposals. The Grantee, by the acceptance of any franchise awarded, agrees that the matters contained in the Grantee's application for franchise and as stated in oral presentation, except as inconsistent with the FCC rules and regulations, law or ordinance, shall be incorporated into the franchise by reference as though set out verbatim.

#### **112.10 TERMINATION OF FRANCHISE.**

1. Grounds for revocation. The City reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:

A. If the Grantee should default in the performance of any of its obligations under this chapter or the franchise, and fails to cure the default within thirty (30) days after receipt of written notice of the default from the City.

B. If the Grantee should fail to provide or maintain in full force and effect, the performance bond, and liability and indemnification coverage as required in Section 112.12 and Section 112.13, respectively.

C. If a petition is filed by or against the Grantee under the bankruptcy act or any other insolvency or creditors' rights law, State or Federal, and the Grantee shall fail to have it dismissed.

- D. If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of its assets.
  - E. If the Grantee makes an assignment for the benefit of creditors.
  - F. If any court of competent jurisdiction, the FCC, or any State regulatory body by rules, decision, or other action determines that any material provision of the franchise documents, including this chapter, is invalid or unenforceable.
  - G. If the Grantee should violate any orders or ruling of any regulatory body having jurisdiction over the Grantee unless the Grantee is lawfully contesting the legality or applicability of such order of ruling.
  - H. If the Grantee fails to receive the necessary FCC or State certification unless such cause is directly attributable to an action or condition imposed by the City.
2. Procedure Prior to Revocation. Upon the occurrences of any of the events enumerated in subsection 1 of this section, the Council may, after hearing, upon thirty (30) days' written notice to the Grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the Grantee must remedy the cause. If, during the 30-day period, the cause shall be cured to the satisfaction of the City, the City may declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified, the Council may revoke the franchise. In any event, before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the Council.
3. Purchase of System by City. If the City determines not to reissue the franchise for reasons other than a material breach of the franchise or reasons unrelated to the performance of the franchise holder or upon receipt of an application for assignment of the franchise, or upon change of de facto control, the Grantee shall first offer the cable television system for sale to the City at a fair and just market value, which value shall include the fair market value of the system as a going concern including the franchise itself and the rights and privileges granted by the City.
- A. When a franchise is revoked pursuant to this section or expires and is not renewed because of a material breach of the franchise, the Grantee shall first offer the cable television system for sale to the City at a fair and just market value, which value shall not include any value for the franchise itself or for any of the rights or privileges granted by the City.
  - B. In the event the determination of fair market value cannot be negotiated or determined, said value shall be determined by an impartial arbitration procedure pursuant to State law, wherein the Grantee and the City shall each choose an arbitrator and the arbitrators chosen shall choose the third and the valuation determined by said arbitrators shall be considered the fair market value at which the system will be offered to the City. The determination of the value of the system shall be decreased by the amount of any damages sustained by the City in connection with revocation or expiration, including without limitation, payment made by the City to another person or entity to operate the cable television system for a temporary period after revocation. The cost of the arbitration procedures shall be shared equally by the City and Grantee.

C. The City shall have ninety (90) days to exercise the right of first refusal to purchase the network, said ninety (90) days commencing on the day the fair market value of the system is determined either through negotiation or the arbitration procedure. If the City does not exercise its option to purchase, and the system is not sold to another operator who has obtained a franchise from the City in a reasonable period of time, the Grantee, upon request by the City, shall promptly remove all its plant, structures, and equipment; provided, however, that in the event the City determines not to exercise its right of first refusal it shall not unreasonably refuse to renew or grant a cable television franchise during a reasonable interim period. While transfer of the system and franchise is being negotiated, arranged or ordered, the Grantee may be required to continue service to the public unless for reasons beyond the control of the Grantee said operation will be economically unfeasible to the Grantee.

4. Restoration of Property. In removing its plant, structures and equipment, the Grantee shall refill at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances, without affecting the electric or telephone cables, wires, or attachments. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance indemnity provided in Section 112.12 and the performance bond in Section 112.13 shall continue in full force and effect during the period of removal.

5. Restoration by City; Reimbursement of Costs. In the event of a failure by the Grantee to complete any work required by subsection 4 above, or any work required by a City law or ordinance within the time established and to the satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the costs thereof within thirty (30) days after receipt of an itemized list of such costs or the City may recover such costs as provided in Section 112.13.

6. Lesser Sanctions. Nothing shall prohibit the City, in its rules and regulations, from imposing lesser sanctions or censures than revocation for violations of provisions of this chapter including the shortening of the franchise period for substantial and repeated violations.

7. Expiration; Extended Operation.

A. Upon the expiration of a franchise, the City may, by resolution, on its own motion or request of the Grantee, require the Grantee to operate the franchise for an extended period of time not to exceed six (6) months from the date of any such resolution. All provisions of the franchise shall continue to apply to operations during an extension period. The City shall serve written notice at the Grantee's business office of intent to extend under this section at least thirty (30) days prior to expiration of the original franchise or any extensions thereof.

B. Grantee shall submit to City its request for the renewal of the franchise beyond the original fifteen (15) year period not sooner than twelve (12) months prior to the expiration of the franchise or later than six (6) months before the expiration of the franchise.

**112.11 FRANCHISE PAYMENT.**

1. Franchising Compensation. Any Grantee of a franchise hereunder shall provide an initial payment to the City in an amount equal to the direct costs of granting the franchise including the conducting of any related elections, and including but not limited to consultant's fees, which sum shall be due and payable concurrently with the Grantee's acceptance of the franchise, to offset the City's costs in the franchise awarding process.
2. Annual Franchise Payment. Any Grantee of a franchise hereunder shall pay to the City an annual fee in an amount equal to three percent (3%) of the "annual gross revenues," as defined herein, in lieu of all other City's permits and fees, to be utilized by the City to offset its regulatory and administrative costs and to maximize awareness and access capacity. This payment shall be in addition to any other payment owed to the City by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county, or local taxes. This payment shall be made semiannually and due forty-five (45) days after the close of each six (6) month period.

**112.12 LIABILITY AND INDEMNIFICATION.**

1. Indemnification of Franchise. It shall be expressly understood and agreed by and between the City and any Grantee hereunder that the Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand which the City may legally be required to pay as a result of the enactment of this chapter and the award of a franchise, except as such suit, judgment, execution, claim or demand may arise from the process of action of selection of a Grantee or Grantees for award of a franchise as provided herein.
2. Indemnification of City in Franchise Operation. It shall be expressly understood and agreed by and between the City and any Grantee hereunder that the Grantee shall save the City and its agents and employees harmless from and against all claims, damages, losses, and expenses, including attorney's fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of the installation, operation or maintenance of the cable television system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter and any franchise granted by the City.
3. Reimbursement of Costs. The Grantee shall pay and by its acceptance of any franchise granted hereunder agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in subsections 1 and 2 above, except as such expenses may arise from the process (as above). These expenses shall include all out-of-pocket expenses, such as consultant's or attorney's fees, and shall also include the reasonable value of any services rendered by the City attorney or his/her staff or any other employee of the City.
4. Public Liability Insurance. The Grantee shall maintain and by its acceptance of any franchise granted hereunder agrees that it will maintain throughout the term of the franchise, any extensions thereto, or removals as required in Section 112.10(4) herein, a general comprehensive liability insurance policy naming as the additional insured the City, its officers, boards, commissioners, agents and employees, in a company approved by the Council and in a form satisfactory to the Council protecting the City and all persons against liability for loss or damage for personal injury, death

or property damage, occasioned by the operations of Grantee under any franchise granted hereunder, in the amounts of:

- A. \$1,000,000.00 for bodily injury or death to any one (1) person, within the limit, however, of \$1,000,000.00 bodily injury or death resulting from any one (1) accident, and
  - B. \$100,000.00 for property damage resulting from any one (1) accident.
5. Evidence of Insurance Filed with Clerk. All policies of insurance or certified copies thereof and written evidence of payment of required premiums, shall be filed and maintained with the Clerk during the term of any franchise granted hereunder or any renewal thereof.
6. No Waiver of Performance Bond. Neither the provisions of this chapter nor any insurance accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse failure of faithful performance by the Grantee or limit the liability of the Grantee under any franchise issued or for damages, either to the full amount of the bond or otherwise.

**112.13 BONDS.** The Grantee shall maintain and, by its acceptance of any franchise granted, agrees that it will maintain throughout the term of the franchise or any renewal or extension thereof or removal as required in Section 112.10(4) a faithful performance bond running to the City, with a good and sufficient surety or other financial guaranties approved by the Council, in a penal sum total of \$50,000.00 conditioned upon the faithful performance of the Grantee and upon the further condition that in the event the Grantee fails to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond. In addition, failure to meet construction deadlines as specified shall result in forfeiture of said bond. Said bond shall be reduced to the penal sum of \$10,000.00 following the full completion of construction of the cable system's construction by Grantee.

**112.14 FEES, RATES AND CHARGES.** The fees, rates and charges in effect on May 1, 1987, are confirmed, but shall be subject to the provisions of the Federal Cable Communications Policy Act of 1984 governing changes, and to the regulations of the Federal Communications Commission which cover determinations whether there is effective competition that permits deregulation of rates without Council approval. Rates shall be non-discriminatory, and the Council shall receive at least thirty (30) days' notice of any proposed change of basic rates made under assumption of deregulation.

**112.15 CONSTRUCTION STANDARDS.**

- 1. Compliance With Safety Codes. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all Federal, State and local codes where applicable. Installation of the system shall be in accordance with the provisions of the *National Electrical Safety Code*, published by American National Standards Institute C2, 1981 edition. Installations on premises of customers shall be in accordance with the *National Electrical Code*, published by the National Fire Protection Association, 1981 edition, with the provision that grounding shall be done in accordance with Section 820-22 (F)(5)(3) at the premises of all customers. This shall apply whether

the service is overhead or underground. Other grounding as provided by section 820-22 may be done in addition to that specified above, at the option of the Grantee.

2. Compliance with Aviation Requirements. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of Federal aeronautics authorities, the State Aeronautics Authority governing the erection and operation of supporting structures or television towers, and all other applicable local or State codes and regulations.

3. Equipment Standards. Grantee's plant and equipment, including the antenna site, headend, distribution system, towers, structures, poles, wires, underground cable and appurtenances shall be installed in accordance with good engineering practices, and shall be located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated so as not to endanger or interfere with the lives of persons or to interfere with the improvements the City may deem proper to make, or to unnecessarily hinder, or obstruct pedestrian or vehicular traffic to public way, places and structures or repairs of public facilities. Erection, installation construction, replacement, removal, repair, maintenance and operation of the system shall be in accordance with the provisions of the *National Electrical Code* of the National Fire Protection Association and *National Electric Code* (outside work) and such applicable laws of the State and applicable ordinances of the City which may now be in effect or may be enacted in the future. All installations shall be of a permanent nature, durable, and maintained in a safe, suitable and substantial condition, in a good order and repair.

A. Grantee's antenna site, headend building, earth station, and related distribution facilities shall be located on the site of the City's existing water tower. The City hereby agrees to provide use and access to this property and tower (except when said water tower is destroyed or in need of replacement) for television reception, processing, and distribution of the signals for the life of this franchise, subject to the terms and conditions described in any separate agreement between the City and franchisee.

B. The said headend building and earth station shall be properly fenced with chain link fence or otherwise properly secured and the enclosure shall be properly mowed and maintained by Grantee.

C. The City shall not be responsible for damage to or breakage of the CATV cable buried in ditches or occurring during emergency repairs made by the City throughout the City. All cable in ditches shall be buried a minimum of two (2) feet.

D. All other cable shall be buried to a depth that is reasonable and necessary according to the provisions of the *Comscope Construction Manual*. The City shall be responsible for any damage or breakage of the CATV cable caused by ordinary maintenance by the City of City-owned property.

4. Monitoring Tests. Grantee's cable television system shall meet technical standards of the rules and regulations of the Federal Communications Commission and Grantee shall perform the periodic tests and make the measurements specified in such rules. The system shall be so designed, engineered and maintained by Grantee so as not to interfere with the television and radio reception of residents of the City who are not subscribers to its services.

**112.16 CONSTRUCTION TIMETABLE.**

1. Permit Application. It is hereby deemed in the public interest that the system be extended as rapidly as possible to all residents within the City. Within thirty (30) days of the effective date of a franchise granted by the City, the Grantee shall file with the appropriate authorities and utilities all initial papers and applications necessary to comply with the terms of this chapter including the application for franchise and any additions or amendments thereto and shall thereafter diligently pursue all such applications. After the Grantee has diligently pursued the acquisition of necessary pole attachment contracts, or other necessary easements, and where such necessary contracts have not been executed or easements obtained after a reasonable period of time as determined by the City, the City may at its discretion, provide assistance to insure the extension of the system to all residents.

2. Commencement of Construction. Within one hundred eighty (180) days of the effective date of FCC certification, the Grantee shall initiate construction and installation of the cable television system. Such construction and installation shall be pursued with reasonable diligence.

3. Commencement of Operation. Within twelve (12) months of the effective date of FCC certification, the Grantee shall "commence operation." Operation will be considered to have commenced when sufficient distribution facilities have been installed so as to permit the offering of "full network services" to at least twenty-five percent (25%) of the dwelling units located within the designated "service area."

4. Delays and Extension of Time. The Council may in its discretion extend the time for Grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused, as the case may be, for any period during which Grantee demonstrates to the satisfaction of the Council that Grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond its control:

- A. Necessary utility rearrangements, pole change-outs or obtainment of easement rights.
- B. Governmental or regulatory restrictions.
- C. Labor strikes.
- D. Lockouts.
- E. War.
- F. National emergencies.
- G. Fire.
- H. Acts of God.

If FCC certification is not required for a franchise granted under this chapter, all time periods specified in subsections 2, 3 and 4 of this section shall commence with the effective date of the franchise granted by the City.

**112.17 CONDITIONS OF STREET OCCUPANCY.**

1. Approval of Proposed Construction. A Grantee shall first obtain the approval of the City prior to commencing construction on the streets, alleys, public grounds or

places of the City. Applications for approval of construction shall be in a form provided by the City.

2. Excavation Permits. A Grantee shall not open or disturb the surface of any street, sidewalk, driveway, or public place for any purpose without first having obtained a permit to do so in the manner provided by City ordinance. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

3. Changes Required by Public Improvements. A Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in other public place, any property of the Grantee when required by the City by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, City-owned power or signal lines, and tracts or any other type of structure or improvement by public agencies.

4. Joint Use; Poles; Undergrounding. The City hereby grants the right, privilege, and authority to Grantee to lease, rent, or in any other manner obtain the use of poles with overhead lines, conduits, trenches, ducts, lines, cables and other equipment and facilities from any and all holders of public licenses and franchises within the corporate limits of the City, and to use such poles, conduits, trenches, ducts, lines and cables in the course of its business. Grantee may install its cables on existing poles owned by other holders of public licenses and franchises within the corporate limits of the City whenever possible for the installation of its cable, but only if an arrangement is reached with that particular licensee or the trustees of any such utility. When installation of cable on poles is not possible, or when the holders of another public license or franchise have installed underground cable, then in that event, unless the Council shall otherwise decide, the cable used by Grantee shall be installed underground. Grantee shall only be allowed to erect its own poles upon receiving the permission of the Council to do so.

5. Services to be Equally Available. The Grantee shall not refuse cable television service to any person or organization who requests such service for lawful purpose, nor shall a company refuse any person or organization the right to cable cost pursuant to provision of this chapter. The Grantee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any unreasonable preference or advantage, or subject any person to any prejudice or disadvantage. The Grantee shall take affirmative steps to disseminate the information concerning the availability of its services to all minority and other under-represented groups. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the system or other legitimate uses there; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classifications shall be entitled, provided such schedules have been filed with and approved by the City as provided in Section 112.14.

6. Fairness of Accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, or other entities having a legitimate use for the system; and no one shall be arbitrarily excluded from its use; allocation of use of said facilities shall be made according to the rules or decisions of regulatory agencies affecting the same.

**112.18 SUBSCRIBER PRIVACY.**

1. It is unlawful for any person or governmental body to initiate or use any form, procedure or device for monitoring or procuring information or data generated from or by cable subscribers' terminals, without prior written valid authorization from each subscriber so affected. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one (1) year and such authorization shall not have obtained from the subscriber as a condition of service. In any case the subscriber shall retain the right to deactivate his/her terminal. Nothing herein shall prevent the Grantee from monitoring for technical integrity. This subsection shall not prevent authorized individuals from obtaining information pursuant to a valid court order.
2. **Subscriber Data.** The City, or a Grantee, or any person shall not, without prior written valid authorization from each subscriber so affected, provide any data identifying or designating subscribers; this shall include but not be limited to subscriber lists. Any data so authorized will be made available to the authorizing subscriber in understandable fashion.
3. **Subscriber Agreements.** Any agreement or contract such as is necessary for subsection 1 and 2 above shall not be a part of any other contract or agreement and shall not be a condition of subscribing to the system.
4. **Facilities not to be Hazardous or Interfere.** All wires, conduits, cables and other property and facilities of the Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the City. The Grantee shall keep and maintain all its property in good condition, order and repair. The City reserves the right hereunder to inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in part or in whole by the Grantee. The Grantee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the City under Section 112.17(4). Grantee shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric, or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in a street shall be placed in the right-of-way between the roadway and the property, as specified by the City.
5. **Method of Installation.** All wires, cables, amplifiers and other property shall be constructed and installed in an orderly fashion and in a manner consistent with the trade. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety considerations. All installations shall be underground in those areas of the City where public utilities providing telephone or electric utility facilities are underground at the time of installation. The Grantee shall likewise place its services underground without additional cost to the City or to the residents of the City other than as may be granted under the provision of Section 112.14.
6. **Request for Removal or Change.** The Grantee shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of said building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be

given no less than ten (10) working days' notice of any more contemplated to arrange for temporary wire changes.

7. Authority to Trim Trees. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and other 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 Grantee. All trimming is to be done under the supervision and direction of the City after the explicit, prior written notification and approval of the City and at the expense of the Grantee. The Grantee may contract for such services; however, any firm or individual so retained shall receive City approval prior to commencing such activity.

8. Restoration or Reimbursement. In the event of disturbance of any street or private property by the Grantee, it shall, at its own expense and in a manner approved by the City and the owner, replace and restore such street or private property in as good a condition as before the work causing such disturbance was done. In the event the Grantee fails to perform such replacement or restoration, the City or the owner shall have the right to do so at the sole expense of the Grantee.

9. Payment to the City or owner for such replacement or restoration shall be immediate, upon demand, to the Grantee. All requests for replacement or restoring of such streets or private property as may have been disturbed must be in writing to the Grantee.

10. Office and Records in City. The Grantee shall at all times make and keep at an office maintained in the City, full and complete plans and records showing the exact location of all cable television system equipment installed or in use in the streets or other public places of the City. The Grantee shall furnish the City a current map or set of maps, drawn to scale, showing all cable television system equipment installed and in place in streets and other public places of the City.

11. Emergency Removal of Plant. If, at any time, in case of fire or disaster in the City, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cables, amplifiers, appliances or appurtenances thereto of the Grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the Grantee, at its sole expense provided that such repairs are not necessitated by negligent act of the City, in which case, cost for repairs shall be borne by the City.

12. Protection of Work. Any opening or obstruction in the streets or other public ways made by the Grantee in the course of the construction, operation, or removal of cable installation shall be guarded and protected at all times by the placement of adequate barriers, fences,, or boarding, the bounds of which during periods-of dusk and darkness shall be clearly designated by warning lights. Grantee shall whenever it is deemed necessary by the City install such steel plates as may be necessary to allow a public roadway to remain open while Grantee is in the course of the construction, operation or removal of cable television.

#### **112.19 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.**

1. The Grantee shall not commit any of the following employment practices and agrees to prohibit the following practices in any contracts or subcontract entered into to effectuate the operation of this franchise.

A. To discharge from employment or refuse to hire any individual because of their race,, color, religion, creed, sex, national origin, age, disability, marital status, or sexual orientation.

B. To discriminate against any individual in terms, conditions, or privileges of employment because of their race, color, religion, creed, sex, national origin, age, disability, marital status or sexual orientation.

In addition to the above, the Grantee shall comply with all applicable State, Federal and municipal laws concerning discriminatory and unfair practices.

2. The Grantee shall not refuse cable television service to any person or organization who requests such service for lawful purpose, nor shall a company refuse any person or organization the right to cable costs pursuant to the provisions of this chapter. The company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any unreasonable preference or advantage, or subject any person to any prejudice or disadvantage. The company shall take affirmative steps to disseminate the information concerning the availability of its services to all minority and other under-represented groups. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the system or other legitimate uses there; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classifications shall be entitled, provided such schedules have been filed with an approved by the City as provided in Section 112.14.

3. Fairness of Accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies or other entities having a legitimate use for the system; and no one shall be arbitrarily excluded from its use; allocation of use of said facilities shall be made according to the rules or decisions of regulatory agencies affecting the same.

#### **112.20 SUBSCRIBER PRIVACY.**

1. It is unlawful for any person or governmental body to initiate or use any form, procedure or device for monitoring or procuring information or data generated from or by cable subscribers' terminals, without prior written valid authorization from each subscriber so affected. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one (1) year and shall not have obtained from the subscriber as a condition of service. In any case the subscriber shall retain the right to deactivate his or her terminal. Nothing herein shall prevent the Grantee from monitoring for technical integrity. This subsection shall not prevent authorized individuals from obtaining information pursuant to a valid Court order.

2. The City or a Grantee or any person shall not, without prior written valid authorization from each subscriber so affected, provide any data identifying or designating subscribers. This shall include but not be limited to subscriber lists. Any data so authorized will be made available to the authorizing subscriber in understandable fashion.

3. Any agreement or contract such as is necessary for subsections 1 and 2 above shall not be a part of any other contract or agreement and shall not be a condition of subscribing to the system.

4. Violations. Violation of this section shall be considered a separate offense for each twenty- four (24) hour period the violation continues following notification or discovery.

#### **112.21 TRANSFER.**

1. Consent Prior to Transfer of Franchise. Any franchise granted hereunder shall be a privilege to be held for the benefit of the public by the Grantee. Said franchise cannot in any event, be sold, transferred, leased, assigned or disposed of in whole or in part, either by forced or voluntary sale, merger, consolidation, mortgage, trust, receivership or any other means without the prior consent of the City expressed by a Council resolution and then only under such conditions as the Council may establish.
2. Consent Prior to Change of Control. Prior approval of the Council shall be required where ownership or control of more than five percent (5%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, nine (9) of whom already own or control five percent (5%) or more of such right of control, singly or collectively; transfer from a subsidiary to a parent corporation or vice versa shall not be considered as a change of control. Prior approval of the Council shall also be required from all changes in ownership or control by a person or group of persons acting in concert, who already own or control five percent (5%) or more of such right of control, singly or collectively.
3. Mortgage or Pledge of Network. Nothing in this chapter shall be deemed to prohibit the mortgage or the pledge of the network or any part thereof. However, any such mortgage or pledge shall be subject to and subordinate to the right of the City under the franchise or applicable laws.

**112.22 COMPLIANCE WITH LAWS.** Grantee shall at all times comply with all rules and regulations of the FCC or any duly authorized agency of the United States of America, and all laws duly enacted now or hereafter by the United States Congress or Iowa General Assembly. This chapter shall be conformed, within one (1) year of their date of adoption, to any and all rules and regulations relating to the permissible term of cable television franchises which may hereafter be adopted by the FCC. Grantee shall be required to conform to all present City codes, including but not limited to plumbing and electrical codes and any ordinance providing for the manner and method of cutting street excavations in the right-of-way, backfills, etc. Grantee shall restore all property of the City and of the inhabitants thereof to its original condition after the installation of either overhead or underground cable.

**112.23 QUALITY OF SIGNAL.** Grantee shall, during the period of its franchise, furnish reasonable, adequate and efficient cable television reception service to the residents of the City wherever possible, and Grantee shall maintain its system in reasonable repair and working order and provide adequate facilities for such maintenance. These requirements shall be temporarily suspended in the event of natural disaster or emergency conditions or other circumstances beyond the control of Grantee.

**112.24 CAPACITY AND PROGRAMMING.** Grantee shall provide as a part of its cable television service the signals of all television broadcast signals consistent with the rules and regulations of the Federal Communications Commission and all other applicable laws, rules or regulations. Grantee may provide such automated video services and such audio services as it wishes and as are consistent with the terms of this chapter.

**112.25 PERMISSION FROM SCHOOLS.** Grantee shall not televise, tape, or in any way reproduce or show to the general public any school activity, either as a public service, or as a commercial activity, without the prior approval of the schools involved.

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