

CHAPTER 112

CABLE TELEVISION FRANCHISE

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112.01 DEFINITIONS. The following terms are defined for use in this chapter:

1. “Cable television system” or “system” means all goods, wires, cables, conduits, manholes, fixtures, equipment, attachments and all appurtenances thereto which are used in the construction, operation and maintenance of the cable television franchise or which receive and amplify signals broadcast by one or more television and/or radio stations and which transmit programming originated by the system itself or by another party, and distribute such signals and programming by wire, cable or other means to persons who subscribe to such service.
2. “Company” means Cox Cable Cedar Rapids, Inc. an Iowa corporation, and its lawful successors and assigns, the grantee of rights under this chapter.
3. “Federal Communications Commission” or “FCC” means the federal agency constituted by the Communications Act of 1934, as amended.
4. “Goods” means all things which are moveable whether or not attached to realty.
5. “Gross revenues” means all revenue derived or produced from or in connection with or related to, directly or indirectly, to the operation of the system within the City by the Company or its affiliates, subsidiaries, parents or any person which the Company has a financial interest from or in connection with the operation of the system within the City with no deductions whatsoever.
6. “Pay cable” means the delivery of programming to subscribers for a fee or charge, in addition to a basic service charge, or a per-channel, per-program or other subscription basis.

7. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.
8. "Subscriber" means a person owning or leasing television receiving goods which are physically wired to receive any transmission from the system or a purchaser or any service delivered over the system.

112.02 QUALIFICATIONS OF GRANTEE AND GRANT OF AUTHORITY. This chapter, which grants to the Company the nonexclusive right to construct, operate and maintain a cable television system in the City, was passed and adopted by the Council after a public hearing. The hearing was held after public notice was given and the notice afforded all interested parties the opportunity to comment upon the legal, character, financial, technical and other qualifications of the Company. The City hereby grants to the Company a nonexclusive franchise, right and privilege to construct, erect, operate, modify and maintain in, upon, along, across, above and over and under highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and in all extensions thereof and additions thereto, in the City, necessary for the construction, maintenance and operation within the City of a cable television system for the purpose of distributing television and radio signals and other electronic impulses in order to furnish television and radio programs and various communications and other electronic services to the public. This grant includes the right to use and occupy streets, alleys, public ways and public places and all manner of easements for the purpose and in the manner set forth. The City specifically reserves the right to grant additional franchises to any person at any time.

112.03 FRANCHISE TERMS. The franchise granted herein may be renewed by the Council upon application of the Company pursuant to the procedures established in this section, and in accordance with the then existing rules of the FCC and applicable law. The franchise granted to the Company shall terminate on July 31, 2008. At least 13 months prior to the expiration of the franchise, the Company shall inform the Council in writing of its intent to seek renewal of the franchise. Upon termination of the franchise, the City, at its election and upon payment to the Company of a price equal to the fair market value of the system, shall have the right to purchase and take over the system. If the City and Company are unable to agree as to the fair market value of the system, the same shall be arbitrated as set forth in Section 112.06 of this chapter. The fair market value of the system shall not include an evaluation of good will or an evaluation of any right of privilege appertaining to it under the franchise. Upon the exercise of this option by the City and its service of a notice of such action upon the Company and upon payment of the purchase price, the Company shall immediately transfer to the City possession and title to all of the system, free of any and all liens and encumbrances not agreed to be assumed by the City and the Company shall execute such warranty deeds, bills of sale, of other conveyances to the City as shall be necessary for this purpose. The Company shall make it a condition of each contract entered into by it with reference to its

operation of the system under the franchise that the contracts shall be subject to the exercise of this option, in the event of purchase by the City or by some other person with the approval of the City, or any person operating the system on a temporary basis in cooperation with the City or with a representative appointed by the City. After the Council has received notice in writing of the Company's intent to seek renewal of the franchise granted herein, the Council shall, after giving public notice, proceed to determine whether the operator has satisfactorily performed the obligations under the franchise. To determine satisfactory performance, the Council shall consider technical developments and performance of the system, programming, other services offered, costs of services, any other particular requirements set in this chapter and shall also consider the Company's annual reports made to the City and the FCC. Industry performance on a national basis shall also be considered. Provisions shall be made for public comment. A four month period shall be provided to determine the Company's eligibility for renewal. Council shall then prepare within two months any amendments to this chapter that it believes necessary. If the Council finds the Company's performance satisfactory, a new franchise may be granted pursuant to this chapter, as amended, for a period of fifteen (15) years. In the event the current Company is determined by the Council to have performed unsatisfactorily, new applicants shall be sought and evaluated and a franchise award shall be made by the Council according to franchising procedures adopted by the Council.

112.04 CONTINUITY OF SERVICE MANDATORY. It is the right of all subscribers to receive all available services insofar as their financial and other obligations to the Company are honored. In the event that the Company elects to overbuild, rebuild, modify or sell the system, or the City terminates or fails to renew the franchise, or the City elects to purchase the system, the Company shall do everything in its power to insure that all subscribers receive continuous, uninterrupted service regardless of circumstances. In the event of purchase by the City or a change of Company, the current Company shall cooperate with the City to operate the system for a temporary period in maintaining continuing of service to all subscribers. In the event the Company fails to operate the cable television system for five (5) consecutive days without prior approval of the Council, except for strikes, acts of God, or other circumstances beyond the control of the Company, the City or its agents shall operate the cable television system until such time that the Company again operates the system or until a new operator is selected, in the event of revocation. If the City is required to fulfill this obligation for the Company, the Company shall reimburse the City for any costs or damages that are the result of the Company's failure to perform.

112.05 RIGHT TO REQUIRE REMOVAL UPON EXPIRATION. At the expiration of the term for which the franchise is granted, or upon its termination and cancellation, as provided for herein, the City shall have the right to require the Company to remove at its own expense all portions of the cable television system from all streets within the City and the Company shall restore said streets to a condition reasonably satisfactory to the City.

112.06 RESOLUTION OF DISPUTES. It is the intent of the City to provide for the orderly resolution of any controversy or dispute between the Company and the City arising out of the enforcement or interpretation of any section or provision of this chapter, or any rule, regulation or procedure relating to cable communication matters. Fact finding and mediation shall be the means of resolving the great majority of such controversies or disputes. Only those matters specifically designated as arbitrable may be submitted to that process for binding resolution. None of these methods, however, shall be the first resort of the parties, but shall be undertaken only after reasonable time and full effort to reach agreement by negotiation. Any controversy or dispute, upon the election of either the Company or the City, shall be submitted to an expert individual acceptable to both parties for an investigation of the facts and a report thereof. Such fact finding shall be for the purpose of developing better information for the use of both parties and shall not be binding upon either party. All fees or other expenses resulting from such finding shall be borne equally by the Company and the City. Any controversy or dispute, upon the election of either the Company or the City, shall be submitted to an expert individual, acceptable to both the Company and the City for the purpose of facilitating discussion and receiving new perspectives on the issues and new proposals for compromise. Such mediation shall not be binding on either party. All fees and other expenses resulting from mediation shall be equally borne by the Company and the City. Only those matters which are expressly arbitrable under the provisions of the franchise may be submitted to arbitration which includes only the purchase price of the system by the City upon expiration or revocation. Arbitrable matters may be submitted to a single expert individual, if both parties agree to do so. Otherwise, arbitrable matters shall be submitted to a three member expert panel. Arbitration shall be binding on both parties. Arbitrated matters shall be held to have been adjudicated and settled, and not open, either directly or indirectly, for review pursuant to the provision of the rules and procedures of the American Arbitration Association. All fees or other expenses resulting from such arbitration shall be paid by the Company and the City as hereinafter provided. In the case of fact finding and mediation, both parties shall present a maximum total of three names each for possible service as experts. If there is no agreement on any of the names, a Judge of competent jurisdiction shall select a person to fulfill the function of expert. In the case of arbitration, both parties shall agree upon the number of persons to serve on the arbitration panel. Such number shall be either one or three. If a single member panel is agreed upon, both parties shall name jointly the person, utilizing the procedures established for fact finding and mediation. If a three member panel is agreed upon, one person shall be named by the City, one shall be named by the Company, and a third person shall be named by agreement between the Company and the City. The third person shall serve as the presiding officer of the panel. If there is no agreement on the single arbitrator or the presiding officer of the three member panel, the procedure established for fact finding and mediation shall be followed. The fees of single experts and arbitrators shall be equally borne by the Company and the City. The fee of the arbitrator who represents one of the parties shall be borne by that party. The fee of the presiding officer of an arbitration panel shall be equally borne by the Company and the

City. The expenses of fact finding and mediation shall be equally borne by the Company and the City. The expenses of arbitration shall be borne as determined by the arbitration panel in its award of finding, but in no event shall the City be obligated for more than one-half the expense.

112.07 COMPLIANCE WITH LAWS, REGULATIONS AND ORDINANCES.

The Company shall at all times be subject to all lawful exercise of police power by the City and any rules and regulations the City may promulgate by ordinance or resolution. The construction, operation and maintenance of the system shall be in full compliance with the applicable provisions of the National Building & Electrical Code and National Electric Safety Code as they now exist or may hereafter be amended and in full compliance with all other codes, ordinances, rules and regulations adopted by the City, the State, or the United States or any agency thereof which may now have or hereafter acquire jurisdiction over the operation of the system by the Company

112.08 LIABILITY AND INDEMNIFICATION. The Company shall defend, indemnify and hold the City harmless for and from all liability, damage, cost and expenses arising from or out of claims of injury to persons or damage to property occasioned by reason of any conduct undertaken by the Company or City pursuant to this chapter. The City shall notify the Company within a reasonable time after the presentation of any claim or demand to the City, either by suit, or otherwise, made against the City on account of any negligence or contract on the part of the Company. A failure of the City to notify the Company shall not relieve the Company of its obligation to the City. The Company further agrees as follows:

1. The Company shall carry Worker's Compensation Insurance, with statutory limits, and Employer's Liability Insurance as required by law.
2. The Company shall carry Comprehensive General Liability and Comprehensive Automobile Liability Insurance with bodily injury limits of not less than three million dollars.
3. The Company shall carry Copyright Infringement Insurance, for copyright infringement occasioned by the operation of the Company under this chapter or alleged to have been so caused or occurred with a minimum limit of one million dollars.
4. The Company with respect to its Worker's Compensation Insurance and Employer's Liability Insurance and Comprehensive General Liability and Copyright Infringement Insurance, shall name the City as an additional insured with separate limits of no less than the amount required of the Company.
5. All insurance required of the Company shall be written by insurance companies approved by the City and authorized to do business in Iowa and with the Company having agents readily available to service the insurance policy and each insurance Company shall agree to furnish the City with certified copies of

certificates of insurance and to provide that the insurance shall not be cancelled unless ten (10) days' prior written notice shall be given to the City.

6. If the Company should commit a breach of this chapter and not remedy the breach within sixty (60) days after having received written notice from the City to do so, then the City, at its discretion, may declare a portion of the performance bond required from the Company equivalent to the amount of damages sustained by the City which are directly attributable to the breach, forfeited and the Company shall thereupon be required to remedy the breach with reasonable dispatch and within 60 days of such forfeiture replace the forfeited portion of the bond. This subsection shall not serve to absolve the Company of any of its obligations under this chapter or the rules and regulations of the Federal Communications Commission.

7. The Company shall pay all premiums chargeable for all insurance and shall keep the same in full force and effect at all times throughout the term of the franchise granted by this chapter and during any renewal thereof and during the period of time required for the removal of the system subsequent to the termination of the franchise granted by this chapter. The performance bond required of the Company shall contain a provision that it shall not be terminated or otherwise allowed to expire prior to 60 days after written notice to that effect is given to the City.

8. Within 60 days after the effective date of the ordinance codified in this chapter, the Company shall file with the Federal Communications Commission a request, petition or other application as may be proper, to secure from the Federal Communications Commission any and all necessary permits, licenses, waivers or other documents as may be necessary to be secured from the Federal Communications Commission to fully comply with the terms of this chapter. However, the same shall be previously submitted to the City. The Company shall diligently pursue all applications with the Federal Communications Commission and shall do all reasonable things necessary and proper to secure any permit, license, waiver or approval from the Federal Communications Commission. The Company shall keep the City advised from time to time of the progress of its submissions to the Federal Communications Commission.

112.09 BOND. Within 30 days after the effective date of the franchise, the Company shall obtain and shall maintain at its cost and expense throughout the term of the franchise and shall file with the Clerk a bond, with a Company authorized to do business in the State of Iowa and found acceptable to the City, which bond shall be in the sum of fifty thousand dollars and which bond shall run to the City and shall guarantee the timely construction and full activation of the cable television system and which shall provide but not be limited to the following conditions: There shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the City resulting from the failure of the Company to satisfactorily complete and fully

activate the cable television system within 24 months from the issuance of the certificate of compliance for the system by the FCC and shall be conditioned upon the faithful performance by the Company of all duties and responsibilities expressly or implicitly set forth in this chapter, and such other requirements as may be provided by law and the actual payment by the Company to the City of all sums due the City under the provisions of this chapter and any and all damages, loss or costs suffered by the City resulting from the failure of the Company to remove the system at the expiration, termination or cancellation of the Company's franchise as set forth in this ordinance. Any extension of prescribed time limits set forth in this chapter must be specifically authorized by the Council. Such extension shall be authorized only when the Council finds that such extension is necessary and appropriate due to causes beyond the control of the Company. The rights reserved to the City with respect to the bond are in addition to other rights of the City, whether reserved by the franchise or authorized by law, and no action, proceeding or exercise of a right with respect to said bond shall affect any other right the City may have. If the Company should commit a breach of this chapter and not remedy the breach within 60 days after having received written notice from the City to do so, then the City, at its discretion, may declare a portion of the bond equivalent to the amount of damages sustained by the City or fine assessable to the Company, forfeited and the Company shall thereupon be required to remedy the breach with reasonable dispatch and within 60 days of such forfeiture replace the forfeited portion of the bond. This section shall not serve to absolve the Company of any of its obligations under this chapter or the rules and regulations of the Federal Communications Commission. The Company shall pay all premiums chargeable for the bond and shall keep the same in full force and effect at all times throughout the term of the franchise granted by this chapter and during any renewal thereof and during the period of time required for the removal of the system subsequent to the termination, revocation or cancellation of the franchise granted by this chapter. The bond required by this section shall contain a provision that shall not be terminated or otherwise allowed to expire prior to 60 days after written notice to that effect given to the City.

112.10 PENALTIES TO COMPANY FOR VIOLATION. For violations of this chapter, the penalty shall be as follows:

1. For failure to obtain prior City approval regarding installation of various part of the system, one hundred dollars per day.
2. For failure to commence operations in accordance with this chapter, two hundred dollars per day.
3. For failure to complete construction and installation of the system as provided in this chapter, five hundred dollars per day.
4. For failure to provide data and reports as requested by the Council, fifty dollars per day.

5. For persistent failure to comply with reasonable recommendations of the Council relating to rates and/or services as provided by this chapter and such reasonable requests or recommendations as may be made pursuant to authority granted by this chapter, fifty dollars per day.

6. In the event that the system fails to meet any FCC performance standards for a full 3-month period, Company shall reduce all subscriber fees by 25 percent until all FCC performance standards are met. The City shall notify the Company during the first month of the 3-month period that the system has failed to meet FCC performance standards. Performance standards shall be those set forth by the Federal Communications Commission.

112.11 SYSTEM CONSTRUCTION, MAINTENANCE AND PROCEDURE.

1. Upon the grant of the franchise to construct and maintain a cable television system in the City, and in furtherance of the Company's execution of contracts with public utility companies or any other owner or lessee of any poles located within or without the City to whatever extent such contract or contracts may be expedient and of advantage to the Company for the use of poles and posts necessary for proper installation of the system, the Company may obtain right-of-way permits from appropriate State, County and Federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the Company's receiving antennas, obtain permission from the Federal Aviation Authority to erect and maintain antennas suitable to the needs of the system and its subscribers and obtain whatever other permits a City, County, State or Federal agency may require. The Company shall construct its system using materials of good and durable quality and all work involved in the construction, installation, maintenance or repair of the system shall be performed in a safe, thorough, reliable and workmanlike manner. Any municipal property damaged or destroyed shall be promptly repaired or replaced by the Company and restored to serviceable condition.

2. The Company's system shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

3. In the event that the City shall annex territory as authorized by law, the Company shall extend energized trunk cable to the portion of the City so annexed within a reasonable time acceptable to the City Council but not less than one year from the date the annexation is certified. Nothing contained in this section shall preclude the requirements of Section 112.12 of this chapter, from being enforced.

4. The Company's system shall be located as to cause no interference with the proper use of streets, alleys and other public ways and places, and to cause no

interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places. Whenever in any place within the City both the electric and telephone utilities shall be located underground, it shall be the obligation of the Company to locate or cause its property to be located underground within such places including service lines to the house. Whenever in any place within the City both the electric and telephone utilities or either one of them, shall be located upon poles above ground, Company may locate or cause its cables to be placed upon the existing poles above ground. If either telephone or electric service lines to the house are overhead then the subscriber shall have the choice of cable television service drops being placed underground or overhead at the subscriber's cost as set forth in Section 112.25 of this chapter. If the electric utility and telephone utility shall be located underground in any place within the City after the Company shall have previously installed its property above ground, it shall nevertheless, at its own expense and at the same time or immediately thereafter remove and relocate its property underground in such places. In areas of the City where electric and telephone utilities are underground, the Company may locate certain equipment above ground upon a showing of necessity to and with the approval of the Council. Facilities of the Company may be placed underground at a property owner's request in an area where electric utilities and telephone utilities are overhead and the additional expense shall be paid by the property owner requesting the underground placement. The provisions of this section shall control over conflicting provisions of the Subdivision Regulations in this Code of Ordinances until the completion of initial construction as set out in Section 112.12 of this chapter.

5. In case of any disturbance of pavement, sidewalk, driveway, ground or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, ground, bushes, grass, plantings and other similar items or surface of any area disturbed, in as good a condition as before the work was commenced. The City Engineer shall approve in advance the time allowed for the Company to disturb pavement, sidewalk, driveway, ground or other surfacing. Unless the City Engineer approves a request of the City to do otherwise, all installations under a street, alley or driveway shall be prohibited.

6. In the event that at any time during the period of the franchise the City shall elect to alter or change the grade of any street, alley or other public way, the Company, upon reasonable notice by the City, shall remove, relay and relocate any part of its system at its own expense.

7. The Company shall not place any part of its system where it will interfere with any gas, electric or telephone fixture, water hydrant or main, or sewer and shall assist the City, without two (2) hours of request, in locating any part of the system.

8. The Company shall prior to the commencement of any construction of any part or phase of the system submit a plat and construction schedule to the Council. The plat and schedule shall be approved by the Council or its authorized representative prior to the commencement of any construction by the Company.
9. All other City ordinances concerning street occupancy and construction shall be in full force and effect upon the cable television system installation.
10. The Company shall, on the request of any person holding a building moving permit issued by the City, temporarily and promptly raise or lower its wires to prevent the moving of said buildings. The expense of temporary removal, raising or lowering of wires shall be paid by the person requesting the service, and the Company shall have the authority to require payment in advance. The Company shall not be given less than 48 hours' advance notice to arrange the temporary wire changes.
11. The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent their branches from coming in contact with wires and cables of the Company. All trimming shall be done under the direction and supervision and with the prior approval of the Public Services Director. All trimming authorized by this chapter shall be done at the expense of the Company.
12. The Company shall provide, upon request and without installation or any type of continuing user charge or fee, service to any municipal building owned or leased and operated by the City. This shall mean only one energized cable to such building. The cost of any internal wiring shall not be borne by the Company.
13. The Company shall provide, upon request and without installation or any type of continuing user charge, service to any nonresidential public or parochial elementary or secondary school building, to any nonresidential nonprofit higher education buildings, to any buildings of private or public nonprofit facilities licensed by the State as hospitals, and to any other nonresidential nonprofit public educational agencies. This shall mean only an energized cable to the building and the cost of any internal wiring shall not be borne by the Company.
14. The Company shall provide upon request and without installation or any type of continuing use charge or fee, service to those agencies and locations listed in subsections 12 and 13 above who demonstrate the capabilities to utilize channels on the system for the dissemination of educational information either for classroom instruction or in-home use including the necessary hardware, excluding production equipment, required to feed a signal back to the head end of origination of program. The Company shall not be required to provide more than five modulators at no cost under this subsection; however, the Company shall provide additional modulators hereunder at the Company's cost.

15. For those agencies listed in subsections 12 and 13, converters shall be provided by the Company for each outlet for maintenance charge only. The Company shall not be responsible for the cost of any internal wiring to each outlet in each facility.

112.12 CONSTRUCTION SCHEDULE. The Company shall accomplish the construction of at least fifty percent of the system for the City within one year after receiving the Federal Communications Commission's certification; thereafter, the remaining fifty percent of the service shall be completed in the second year making cable service available to all residents of the City, subject to the provisions of Section 112.13.

112.13 LINE EXTENSIONS.

1. It shall be the obligation of the Company to serve all residents of the City except to the extent that density of potential subscribers, adverse terrain or other factors render providing service impractical, technically unfeasible or economically noncompensatory as approved by the Council. For purposes of determining compliance with the provisions of this section, and to provide for reasonable and nondiscriminatory policy governing extensions of cable service within the City, the Company shall extend service to new subscribers at the approved installation charge and monthly rate for consumers of that classification, where there are platted subdivisions within the City.

2. In the event that the standards of subsection 1 above are not met, extensions of service shall be required only on a basis which is reasonable and compensatory as shall be determined by the Council. In any individual case where it can be shown that it is unreasonable and noncompensatory to extend cable, it shall be an option of the City to request the Company and the property owners to agree on a sharing of the costs of the extension of the cable and that as future subscribers use the extended line reimbursement made to the original parties. In the event the owner and Company are unable to agree, the City at its option may require that the Company enter into arbitration in the same manner and to the same extent as if the City were party to the dispute.

3. Whenever the Company desires to exclude an area of the City from service by reason of the provisions of subsection 1 above it shall so advise the Council and the Council shall set a public hearing and provide for the publication of notice at the cost of the Company and at the public hearing the persons who may be affected by the lack of said service shall have the opportunity to appear and be heard. This provision shall apply to the initial construction of the system if any portion of the City is not to be included in the initial construction of the system.

112.14 COMPLIANCE WITH STANDARD. All facilities and equipment of the Company shall be constructed and maintained in accordance with the requirements and specifications of the National Electrical Safety Code and other applicable ordinances and

regulations of the City or other County, State or Federal agencies including all amendments thereto.

112.15 COMPANY RULES AND REGULATIONS. The Company shall have the authority to promulgate rules, regulations, terms and conditions subject to the approval of the Council governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this chapter, and to assure an uninterrupted service to each and all its customers. The rules and regulations, terms and conditions so promulgated shall not be in conflict with the provisions of this chapter or of any County, State or Federal ordinances, laws or rules and regulations.

112.16 SUBSCRIBER RIGHTS.

1. The Company shall not create rules and regulations that preclude the subscriber from having an outside antenna system and antenna switch device.
2. The Company shall publish a list of acceptable switch devices and make said list available to its subscribers. The Company in no way shall be responsible for servicing of switching devices not purchased from the Company.
3. The Company rules and regulations shall not prohibit the removal and reinstallation of a receiving device from any subscriber by a trained, authorized Company or firm dealing in the repair and maintenance of these devices. There shall be no disconnection or installation charge or fees for disconnection and reinstallation during the repair and replacement of any receiving device.
4. The Company shall not allow its cable or other operations to interfere with television reception of persons not served by the Company, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents of the City. The Company shall not require the removal, or offer to remove, any existing antenna as a condition of providing cable service. The Company shall allow switching devices from the service to the subscriber's television antenna as long as they provide no interference or hazard to the system.
5. Upon termination of service to any subscriber, for any reason, the Company shall, upon the subscriber's written request, promptly remove all of its facilities and equipment from the subscriber's premises without charge.
6. If the Company fails to provide any material service requested by a subscriber or programmer in accordance with the standards set forth in this chapter, the Company shall, after adequate notification and being afforded the opportunity to provide the service, promptly refund all deposits or advance charges paid for the service in question by the subscriber or programmer. This section includes any advance charges or fees which may be repaid on a daily prorated basis.

112.17 APPROVAL OF TRANSFER.

1. The franchise shall not be assigned or transferred either in whole or in part or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest, or property therein passed or vested in any person either by an act of the Company or by operation of law without the consent of the Council.
2. The consent or approval of the Federal Communications Commission to any assignment, lease, transfer, sublease or mortgage of the franchise shall not constitute a waiver or release of the rights of the City in and to the streets.
3. Prior approval of the Council shall be required where ownership or control of more than ten percent of the right of control of the Company is acquired by any person or group of persons acting in concert. By its acceptance of the franchise the Company specifically agrees that any such acquisition occurring without prior approval of the Council shall constitute a violation of this chapter. The Company shall file each year an annual report of ownership to the Council.
4. Nothing in this section shall be deemed to prohibit a mortgage or a pledge of the system or any part thereof or a leasing by the Company from another person of system equipment or any part thereof for financing purposes or otherwise. Any such mortgage, pledge or lease shall be made only with the prior approval of the Council and shall be subject and subordinate to the rights of the City under this chapter and any other applicable law.
5. City approval shall not be unreasonably withheld if the vendee, assignee or lessee has filed with the appropriate officials of the City an instrument duly executed, reciting the fact that such sale, assignment or lease accepting the terms of this chapter and agreeing to perform all conditions thereof and if proper evidence is submitted showing such person capable of performing the service.

112.18 COMPLIANCE WITH FCC RULES AND REGULATIONS. The Company shall, at all times, comply with the rules and regulations governing cable television operations promulgated by the Federal Communications Commission. This shall include adherence by the Company to Federal Communications Commission rules regarding technical and engineering specifications involved in the construction of the system and a signal carriage therein. Any modifications as provided in Section 76.31(A)6 of the Federal Communications Commission rules and regulations shall be automatically included within and considered a part of this chapter by reference within one year after the adoption of any modification or at any time of the franchise renewal if sooner.

112.19 CHANNEL CAPACITY, EXCESS AND PICTURE QUALITY. The cable television system to be installed shall:

1. Be upgraded to increase channel capacity to 42 channels. Absent conditions beyond the control of the Company, the system upgrade will be completed by December 31, 1993. The Company shall upgrade and maintain the system in keeping with the latest state-of-the-art technology.
2. Provide one channel, without charge, for the exclusive use of the City. This channel may be shared with other Marion services with the understanding that the City has first priority on usage. Upon completion of the upgrade, the Company will have the capability of transmitting Council meetings and other governmental and community events to subscribers within the franchise area.
3. Provide at least one public access channel.
4. Provide equipment and facilities for access use. Included should be video cameras and equipment capable of storing programs for later showing. Access studio facilities must be made available to all access users on a first come, first served basis. The Company shall provide technical and production assistance to access users as needed.
5. Be capable of passing standard color television signals without the introduction of material degradation of color fidelity and intelligence from the head and input to the subscribers' televisions receivers and shall be capable of 24-hour continuous operation.
6. The Company shall establish operating rules for channels, which rules shall be available for public inspection and the rules shall provide for availability on a first come, first served basis and shall be nondiscriminatory in effect and shall not allow for censorship of access programming.

112.20 INTERCONNECTION. The Company may be required to interconnect its system with any other broadband communication facility operating in an adjacent territory. Interconnections shall be made within sixty (60) days of a request made by the City. For good cause shown, the Company may request and the Council may grant reasonable extensions of time to comply with the requirements.

112.21 CITY RIGHTS.

1. City Rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power.
2. Use of System by City. The City has the right of maintaining upon poles or in the underground conduits of the Company wire and fixtures necessary for a traffic signal control system or a police or fire alarm system. The wires and fixtures shall be installed and maintained at the expense of the City and shall comply with reasonable rules and regulations of the Company designed to ensure a minimum danger of contact or conflict between the wires and fixtures of the

Company. The Company shall charge no fee to the City for uses under this section.

3. Emergency or Disaster. In the case of any emergency or disaster declared by the Governor, Mayor, Fire Chief, Police Chief, Civil Defense Director, or other appropriate official, the Company shall, upon the request of the City, make its facilities available to the City for emergency use during the emergency or disaster period. The Company shall, at its expense, provide the City with the emergency override equipment activated by phone lock-out. At any time in case of a fire or disaster it shall become necessary in the judgment of the Fire Chief, Police Chief or Civil Defense Director to cut or move any part of the system, it may be done and any subsequent repairs shall be made by the Company, at its own cost and expense without charge against the City. The Company shall incorporate into its facilities the capability for an emergency override alert whereby the City or other governmental unit in times of crises may be able to introduce a bulletin on all channels simultaneously.

4. Liability. The City shall not be liable for any damage occurring to the property of the Company caused by employees of the City in the performance of their duties, except for damage caused to the Company's facilities by the negligence of the City's employees while they are conducting City business and damages shall be limited to the cost of repairs or replacement. The City shall not be liable for the interruption of service by actions of City employees in the performance of their duties, nor shall the City be held liable for the failure of the Company to be able to perform normal services due to acts of God or other factors beyond the control of the City.

5. No Property Right. Nothing in this chapter shall grant to the Company any right of property in the City-owned property, nor shall the City be compelled to maintain any of its property any longer than, or in any fashion other than in the City's judgment its own business or needs may require.

6. Construction Approval by City. Except for individual service drops, the Company shall not commence construction of any part of system without the prior approval of the City Engineer, which approval shall not be unreasonably withheld. The City has the right to inspect the construction, operation and maintenance of the system to insure adherence to the terms of this chapter and rules and regulations promulgated pursuant to this chapter.

7. Correction of Defects. In the event the Company should violate any of the terms of this chapter, or any of the rules and regulations as may be from time to time lawfully adopted, or if the Company becomes insolvent, unable or unwilling to pay its debts or is judged as bankrupt, or attempts to or does practice any fraudulent or deceitful practice in its conduct or relations under the franchise with the City or subscribers or potential subscribers, the City may give to the Company thirty (30) days' written notice to correct such violation or condition, and if the

Company does not make the correction within thirty (30) days from the posting of the written notice, the Company shall be subject to cancellation of the franchise and after the expiration of an additional thirty-day written notice of cancellation from the City to the Company, the Company's franchise, and its right to operate thereunder in the City shall stand forfeited and cancelled. Notice shall be by certified mail.

8. Franchise Right. The City hereby expressly reserves the right to grant additional franchises within the City to other persons for the conduct of other cable television systems under terms no less burdensome or more favorable than those contained herein.

112.22 ACTIVITIES PROHIBITED.

1. The Company, its officers, agents and employees are prohibited from engaging in the sale, service, rental or leasing of television receivers, radio receivers or related parts and accessories with any person anywhere in the City, whether for a fee or charge or not. The Company shall be allowed to furnish, sell or service equipment or apparatus between the terminals of the television or FM radio back to the head end installation. The Company shall prohibit any of its officers, agents and employees from violating the terms of this section, whether in the performance of duties of the Company or otherwise.

2. Company shall not deny service, deny access or otherwise discriminate against subscribers or general citizens on the basis of sex, race, color, creed, religion, disability, age or national origin. Company shall comply at all times with other applicable Federal, State and City laws, and all executive and administrative orders relating to nondiscrimination.

112.23 PAYMENTS TO THE CITY.

1. The Company shall pay to the City five percent (5%) of all the gross revenues. At the close of the Company's fiscal year, an annual report shall be provided to the Council detailing all gross revenues received by the Company and indicating its source. The City reserves the right to require additional information detailing properties and expenses relative to the Company's services within the City for the year. The Company shall, at least annually, submit a copy of its stockholders report to the Council. If the FCC requirements change during the term of the franchise, the City reserves the right to increase the 5% payment to the City in accordance with FCC regulations; however, the payment shall not be reduced during the term of the franchise.

2. All payments to the City shall be made quarterly and are due forty-five (45) days after the close of the period. For determining time of payments, the City's fiscal year is July 1 through June 30. Upon application, the City may allow the Company to pay by the Company's fiscal year if different from the City's.

112.24 RECORDS AND REPORTS.

1. The Company may keep full, true, accurate and current books of account, which books and records and all other pertinent books, records, maps, plans, financial statements and other like materials shall be made available for inspection and copying by the City upon reasonable notice and during normal business hours. The City may audit books and records, from time to time, and shall also require the Company, not more than once a year, to furnish the City a copy of an audit at the Company's expense from an independent auditor, and such other FCC reports as the City may desire.
2. Within six months from the effective date of its franchise, the Company shall submit to the Council a plan for the entire City indicating the date on which the Company expects the installation of the system to be completed and available for service to subscribers. The Company shall furnish the City with progress reports yearly indicating in detail the area of construction of the system to date.

112.25 SUBSCRIBER RATES AND CHARGES. In consideration for services rendered to subscribers, the Company shall have the right to charge and collect from subscribers fair and reasonable compensation calculated to offset all necessary costs for provision of the services and including a fair rate of return on investment devoted thereto, under efficient and economical management.

112.26 LOCAL OFFICE; COMPLAINT PROCEDURES.

1. The Company shall maintain within the City a local business office or agent for the purpose of receiving and resolving all subscriber complaints. The provisions of this section shall be complied with if the Company maintains a local business headquarters office staff of adequate personnel no more than three (3) miles from the corporate limits of the City, which office may be reached by local, toll-free telephone call, and provides the City with a name, address, and published phone number of the person who will act as the Company's agent to receive complaints. The local office shall be open during all regular business hours, having a publicly listed telephone, and shall be so operated that complaints and requests for repairs or adjustments may be received on a 24-hour basis. Complaints from subscribers shall be investigated and corrected as soon as possible, but at least within three (3) business days of their receipt. The Company shall maintain a service log which will indicate the nature of each complaint, and the name and address of the complainant and a description of the action taken by the Company and the time and date of the action taken.
2. The Company shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the City Manager. The Company shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system and of any changes thereto at the time the changes are enacted. The Company shall require its employees or representatives

to wear proper identification at all times. The City designates the City Manager as the officer responsible for the continuing administration of the franchise, and the implementation of complaint procedures.

3. Complaints by any person as to the operation of the cable television system may be filed in writing with the City Manager and the cable Company. The City Manager shall be notified by the Company within thirty (30) days after receiving the complaint as to the disposition of the complaint with action taken being described. Within the time prescribed by the City Manager, the Company shall resolve the complaint or advise the City of its refusal or inability to do so.

112.27 PROTECTION OF PRIVACY.

1. Except to allow Company to investigate and uncover Pay-Per-View theft, the Company shall not permit the transmission of any signal, aural, visual or digital, including polling the channel selection, from any subscriber's premises without first obtaining written permission of the subscriber.

2. Grantee shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of two-way services utilizing aural, visual or digital signals without first obtaining written permission of the subscriber.

3. It is unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised C.A.T.V. system for the purpose of taking, receiving television signals, radio signals, pictures, programs, or sound.

4. It is unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of system for the purpose of enabling himself or others to receive or transmit any television signal, radio signal, picture, program or sound, without payment to the owner of the system.

5. Any person violating or failing to comply with any of the provisions of this section shall be guilty of a misdemeanor.

6. The Company shall not sell or in any other manner make available the Company's subscriber lists to any person, unless:

A. The same is necessary to conduct a legitimate cable-related business activity, provided that the receivers of such information are likewise restricted from selling or in any manner make such information available to others; or

B. It is pursuant to court order; or

C. Permission is granted by the subscriber.

112.28 ADDITIONAL REGULATIONS. The City reserves the right to adopt, in addition to the provisions contained in this chapter, any additional rules or regulations as it shall find necessary in the exercise of its police power.

112.29 PENALTIES. Should the Company, its successors or assigns, violate any of the provisions of this chapter or any reasonable rules and regulations established by the City pursuant hereto, and should such violation continue for more than thirty (30) days after the City has given written notice of the violation, failure or default, the same shall be cause for the forfeiture or revocation of the franchise and the termination of all rights hereunder, provided, however, any delay in correcting the violation which is caused by factors beyond the control of the Company shall not be included in computing the length of the continuance of the violation. The City Manager may make written demand that the Company do or comply with any such provision, rules, order or determination. If the violation by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City Manager shall cause to be served upon the Company at least ten days prior to the date of such Council meeting, a written notice of intent to request such termination and the time and place of the meeting, notice of which shall be published at least ten (10) days before such meeting. The Council shall consider the request of the City Manager and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Company was with just cause. If such violation by the Company is found to have been with just cause, the Council shall direct the Company to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable. If the Council shall determine such violation by the Company was without just cause, then the Council may, by resolution, declare that the franchise of the Company shall be terminated and forfeited unless there is compliance by the Company within such period as the Council may fix.

112.30 PROGRAM CONTENT RESTRICTIONS. In addition to providing basic cable television services, the Company may offer optional pay cable services. The Company shall not program or in any way display any programming that violates applicable local, State or Federal obscenity laws.

112.31 EMPLOYMENT REQUIREMENT. The Company shall not refuse to hire, discharge from employment or discriminate against any person regarding compensation, terms, conditions or privileges of employment because of sex, race, color, creed, disability, religion, age or national origin. The Company shall maintain a copy of its Affirmative Action Program for inspection by the City.

112.32 SCHEDULED REEVALUATION. The City and the Company shall hold scheduled reevaluation sessions within thirty (30) days of the fifth and tenth anniversary dates of the Company's obtaining certification for the system from the FCC. All such reevaluation sessions shall be open to the public and announced in a newspaper of general circulation at least five (5) days before each session. Special reevaluation

sessions may be held at any time during the term of the ordinance, provided that both the City and the Company shall mutually agree upon the time and place of the topics to be negotiated. All such reevaluation sessions shall be open to the public and announced in a newspaper of general circulation at least five (5) days before each session. The following topics may be discussed at each scheduled reevaluation session: service rate structures; free or disconnected services; application of new technology; system performances; services provided; programming offered; customer complaints; privacy and human rights; amendments to this chapter; underground progress; and judicial and FCC rulings. Topics in addition to these listed above may be added if agreed upon by both parties. Members of the general public may add topics either by working through the negotiating parties, or by presenting a petition. If such a petition bears the valid signatures of 50 or more qualified electors of the City, the proposed topic or topics shall be added to the list of topics to be discussed at the reevaluation session.

112.33 CHANGES AND AMENDMENTS. The Council reserves the right to change or amend this chapter at any time during the term of the franchise.

112.34 BINDING ON COMPANY. The provisions, terms, and conditions of the franchise shall be binding upon the Company, successors, heirs, and assigns upon acceptance thereof by the Company.

112.35 ACCESS REQUIREMENTS. For purposes of providing minimal provisions for access, the Company shall meet the requirement of all FCC rules which are in effect, and whether or not such rules are in effect shall meet the requirements of the provisions set forth in Appendix A attached to the ordinance codified in this chapter.

112.36 COMPANY ACCOUNTS. During the term of the franchise the Company shall maintain its active checking and/or savings accounts in financial institutions located within the City and shall make all initial deposits of gross revenues into one or more of said accounts.

112.37 MOST FAVORED NATIONS. The Company, by acceptance of the franchise, agrees that the City may, at its election, with or without notice, revise the franchise during its term to conform to any and all provisions of any franchise granted to the Company by the City of Cedar Rapids or the City of Hiawatha, calculated on an equivalent cost-per-subscriber basis, and any such changes shall be in full force and effect as if adopted herein.

EDITOR'S NOTE

Ordinance No. 78-26 granting a cable TV franchise for the City was passed and adopted on September 7, 1978.