

CHAPTER 113

CABLE TELEVISION FRANCHISE

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

1. “Cable service” means the transmission to subscribers of video programming or other programming sources, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

2. “Cable television system” or “system” means that portion of any communication system which receives and amplifies signals broadcast by one or more television and/or radio stations and which transmits programming originated by the system itself or by another party, and distributes such signals and programming by wire, cable or other means to persons who subscribe to such service.

3. “Company” means ImOn Communications, LLC., an Iowa corporation and its lawful successors and assigns. “Company” may also be referred to as “grantee.”

(Ord. 07-02 – Aug. 07 Supp.)

4. “Federal Communications Commission” or “FCC” means that Federal agency constituted by the Communications Act of 1934 as amended.

5. “Gross revenues” means all revenue derived or produced from or in connection with or related to, directly or indirectly, to the provision of cable service via 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. However, "gross revenues" does not include any revenues the Company derives from telecommunications services.

6. "Normal operating condition" means those service conditions which are within the control of the Company. Those conditions which are not within the control of the Company include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions, and reasonable periods of time after the occurrence of the event causing such conditions. Those conditions which are ordinarily within the control of the Company include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

7. "Plant mile" means a linear mile measured on the ground where wire, cable or other means is hung on strand or buried underground.

8. "Service interruption" means the loss of picture or sound on one or more cable channels, or unreasonable degradation of the aural or video signal to the extent programming on the channel cannot be viewed or heard by a subscriber.

9. "Standard installation of cable services" means an installation of equipment and other materials necessary in order to provide cable service, where the surface distance from the Company's distribution line to the nearest exterior point of the structure for which the installation has been ordered is 125 feet or less.

113.02 QUALIFICATIONS OF GRANTEE AND GRANT OF AUTHORITY.

This Regulatory Ordinance 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 proceeding. Said proceeding was held after public notice was given and afforded all interested parties the opportunity to comment upon the legal, character, financial, technical and other qualifications of the Company. Therefore, 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 the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a cable television system for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the purposes herein set forth. The franchise granted herein shall not excuse the Company from complying with any other regulatory ordinances of the City, including without limitation, any telecommunications ordinance subsequently adopted by the City,

and shall not be deemed to have granted the Company a franchise for telecommunications services.

113.03 FRANCHISE TERM. The franchise granted herein may be renewed by the City Council upon application by 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 January 6, 2022. The Company shall notify the City at least 3 years prior to the expiration of its franchise as to whether or not the Company intends to seek a franchise renewal. The Council, upon notification by the Company of its intention to seek franchise renewal, shall follow all procedures of law effective and applicable at the time. The Company shall, at all times during the life of this chapter, be subject to all lawful exercise of the police power of the City and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide. The construction, operation and maintenance of the system by the Company shall be in full compliance with such portions of the National Building and Electric Code and National Electric Safety Code as may be applicable and as the same may be amended and revised from time to time, and in full compliance with all other codes, ordinances, rules and regulations now in effect or hereinafter adopted by the Federal Communications Commission, the City, or other agency of the State of Iowa or the United States, which may hereafter acquire jurisdiction of the operations of the Company authorized herein.

(Ord. 07-02 – Aug. 07 Supp.)

113.04 LIABILITY AND INDEMNIFICATION. The Company shall indemnify the City for, and hold it harmless from all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to this chapter. The City shall notify the Company's representative within 15 days after the

presentation of any claim or demand to the City, either by suit, or otherwise, made against the City on account of any negligence or contract as aforesaid on the part of the company. Failure to do so shall not relieve the company of its obligation to the City. The company further agrees as follows:

1. Company shall carry Worker's Compensation insurance, with statutory limit, and employer's liability insurance as required by law.
2. Company shall carry comprehensive general liability and comprehensive automobile liability insurance with bodily injury limits of not less than \$3 million, naming the City as additional insured with separable limits of no less than said amount.
3. Company's Worker's Compensation, comprehensive general liability and comprehensive automobile liability insurance shall be written by an insurance company approved by the City, and company agrees to furnish City with certified copies of certificates of insurance of said policies, which shall provide that insurance shall not be canceled unless 10 days' prior written notice shall first be given to the City. Where the company is self-insured, it shall provide the City with documentation proving the viability of its self-insurance program and the size of its risk management fund.

113.05 BOND.

1. Within 30 days after the effective date of the franchise, the company shall file with the Clerk a performance bond in the amount of \$50,000.00 to be maintained in full amount at all times in a surety company approved by the City as security for the faithful performance by it of all the provisions of the franchise, and compliance with all orders, permits and directions of any agency of the City having jurisdiction over its acts or defaults under this contract, and the payment by the company of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system.
2. If the company fails to pay to the City any compensation required pursuant to this chapter within the time fixed herein; or, fails, after 10 days' notice to pay to the City the franchise fee due and unpaid; or, fails to repay to the City, within such 10 days, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the company in connection with this franchise; or, fails, after 3 days' notice of such failure by the Clerk, to comply with any provisions of this chapter which the Council reasonably determines can be remedied by an expenditure of the security, the City may immediately be entitled to payment, with interest and any penalties, from the bond company, which amount shall be promptly paid by the bond company.

113.06 VIOLATIONS. For violations of this chapter the penalties shall be chargeable to performance bond as follows:

1. For failure to obtain prior City approval regarding installation of various parts of the system as provided for in Section 113.17(6) – \$100 per day.
2. For failure to provide data and reports as requested by the Council – \$50 per day.
3. For persistent failure to comply with reasonable recommendations of the Council relating to service as provided for in this chapter and such reasonable requests or recommendations as may be made pursuant to authority granted by this chapter – \$50 per day.
4. For failure to restore the cash deposit as required herein within the specified 30 days, the entire cash deposit remaining (if any) shall be forfeited.
5. In the event that the system fails to meet any FCC performance standards for a full 3-month period, grantee shall pay a penalty equal to 25% of the company's gross revenues for the period during which the system failed to meet the standards. The City shall notify the company during the first month of the three-month period that the system has failed to meet performance standards.

113.07 RESIDENT COMPANY AND AGENT. All insurance policies and bonds as are required of the company in this chapter shall be written by a company or companies authorized and qualified to do business in the State of Iowa. Certificates of all coverage required shall be promptly filed by the company with the City.

113.08 APPLICATION FOR PERMIT. Within 60 days after the effective date of this chapter, the company shall file with the Federal Communications Commission such request, petition or other application as is then proper to secure from said Federal Communications Commission any and all necessary permits, licenses, waivers, or the like as may be necessary to be secured from said Federal Communications Commission to fully comply with the terms of this chapter. The company shall concurrently submit same to the City. The company shall thereafter diligently pursue such application with the Federal Communications Commission and shall do all reasonable things necessary and proper to secure any such permit, license, waiver, approval or the like from it. The company shall keep the City advised, from time to time, of the progress of such application.

113.09 SYSTEM CONSTRUCTION, MAINTENANCE AND PROCEDURE.

1. Upon 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 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 cable system using material of good and durable quality and all work involved in the construction, installation, maintenance and repair of the cable system shall be performed in a safe, thorough, and reliable manner. Any municipal property damaged or destroyed shall be promptly repaired or replaced by the company and restored to serviceable condition, at company expense.

2. The company's system, poles, wires, and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of 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. However, in the event that the City shall annex further territory as authorized by law, the company shall extend energized trunk cable to the remaining portions of the City so annexed within a reasonable time acceptable to the Council. If the annexed area is already served by a competing cable company, the grantee is not required to serve the area unless it is petitioned to do so by the residents of the annexed area at the equivalent of 25 homes per mile. Nothing contained in this section shall preclude the requirements of Section 113.10 of this chapter from being enforced.

3. All transmission and distribution structures, lines and equipment erected by the company within the City 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 the said streets, alleys, or other public ways and places. Wherever, within the City, telephone and electrical cable is underground at the time of installation, the company shall also place the cable television cable underground; and at any time after installation that the telephone and electrical cable is hereafter placed underground, the company shall also at the same time reinstall and place all cable television cable underground.

4. 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, planting, and similar items, or surface of any street or alley disturbed, in as good condition as before said work was commenced. The City Engineer shall approve all requests of the company in advance, in the case of disturbance of pavement, sidewalk, driveway, ground, or other surfacing. Further, the Public Services Director shall approve in advance the time allowed for the company to disturb pavement, sidewalk, driveway, ground or other surfacing.

5. In the event that at any time during the period of the franchise the City shall elect to make any improvement or change it deems proper to make to any street, alley, or other public way, the company, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

6. The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main. The company shall, prior to commencement of any construction of any parts or phases of the system, prepare a plat and construction schedule, which such plat and schedule shall be kept on file by the company and may be reviewed by the Council or its authorized representative prior to the commencement of any such construction by the company, at the City's option.

7. The company shall, on the request of any person holding a building moving permit issued by the City, temporarily promptly raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than 48 hours' advance notice to arrange for such temporary wire changes.

8. The company shall have the authority to trim trees upon or overhanging any streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the company. All trimming shall be done under the supervision and direction and with the approval of the Public Services Director. All trimming authorized by this chapter shall be done at the expense of the company.

9. The company shall provide upon request and without installation charge or any type of continuing use charge or fee, service to any municipal building owned or leased and operated by the City. This shall mean only an energized cable to such building. The cost of any internal wiring shall not be the expense of the company.

10. The company shall provide upon request and without installation charge or any type of continuing use charge, service to any public or parochial elementary or secondary school buildings, to any nonprofit higher education building, to any buildings of private or public nonprofit facilities licensed by the State of Iowa as hospitals, and any other nonprofit public educational agencies. This shall mean an energized cable to such building. The cost of any internal wiring shall not be borne by the company. The company shall have the authority to enforce signal leakage standards established in the Federal Cable Act.

11. The company shall provide upon request and without installation charge or any type of continuing use charge or fee, service to those agency locations listed in

subsections 9 and 10 who demonstrate the capabilities to utilize channels on the cable system for the dissemination of educational information either for classroom instruction or in-home use including the necessary hardware and modulators, excluding production equipment required to feed a signal back to the head end of origination of program. Five modulators shall be provided at no cost for origination by agencies listed in subsections 9 and 10 above. The company shall provide modulators at a reasonable cost should the need for said modulators exceed the 5 provided by the company as outlined in this subsection.

12. Any public or parochial school, any nonprofit higher educational institutions, any buildings of private or public nonprofit public facilities, licensed by the State of Iowa as hospitals, any other nonprofit public educational agencies and any municipal buildings owned or leased and operated by the City shall be allowed to purchase converters from the company at a reasonable cost, or from any other source provided such converters comply with technical specifications established by the company. If the converters are provided by the institution either by purchase from the company, or, from another source meeting technical specifications, then the same shall be maintained by the institution or agency without any monthly charge by the company. If the company provides the converter, then it shall be the responsibility of the company to maintain the converter.

13. The company shall provide upon request to any public or parochial high school, or the Grant Wood Educational Agency access to the Iowa Communications Network. This access shall be provided without installation charge or any type of continuing use charge or fee. The Company will build a locally switched network, that may include the use of diverse routing for reliability purposes. This network shall meet all the specifications set forth by the State of Iowa as it relates to the construction of "Phase 3" of the Iowa Communications Network. The company will only be required to honor those requests that have secured the funding to equip a classroom for interactive teaching as provided by the State of Iowa.

113.10 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 impracticable, 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 the standards of subsection 1 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 be 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 subparagraph 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.

113.11 COMPLIANCE WITH STANDARDS. 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 such applicable ordinances and regulations set forth by the City and/or any other local, State or Federal agencies, including all amendments.

113.12 COMPANY RULES AND REGULATIONS. The company shall have the authority to promulgate such rules, regulations, terms and conditions subject to approval of the Council governing its obligations under this chapter, and to assure an uninterrupted service to each and all of its customers, provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of Federal and State laws, and City ordinances or rules and regulations of the City. The company shall not create rules and regulations that preclude the subscriber from having an outside antenna system and antenna switch device. The company may publish a list of acceptable switch devices and make said list available to its subscribers. The company is responsible for maintenance of switch devices furnished by itself, but not if furnished by a source other than the company.

113.13 APPROVAL OF TRANSFER.

1. No transfer of control of the cable system shall take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance of any other form of disposition, without prior notice to and approval by the Council, which shall not be unreasonably refused. The notice shall include full identifying particulars of the proposed transaction, and the Council shall act by resolution, or

disapprove a transfer of control; if no action is taken within sixty days, approval shall be deemed to have been given.

2. The consent or approval of the Council to any assignment, lease, transfer, sub-lease, or mortgage of the company shall not constitute a waiver or release of the rights of the City in and to the streets.

3. For the purposes of this section the term "control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

4. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of 10 percent of the voting shares of the company.

5. A mortgage or pledge of the cable system equipment or any part thereof or a leasing by a company from another person of said cable system equipment or part thereof for financing purposes or otherwise 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 or applicable law.

6. The company shall give the City written notice of any sale, lease, or transfer of any kind of more than 5% of the voting shares of the company. Upon such notice, the City may require the company to produce for its examination any documents or books of account relating to the condition of the company.

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

113.15 CHANNEL CAPACITY, EXCESS AND PICTURE QUALITY.

1. The cable television system shall:

A. Upon construction, have an 80-channel capability and a technical capacity for return or two-way communications. The company shall construct the system with fiber optic cable wherever feasible. There shall be no diminution, a lessening of the mix, level or quality of services due to such expansion or any other implementation of any technological advancement. The company will install and maintain a cable television system in keeping with latest state-of-the-art technology including the capability for satellite reception.

B. Provide 1 channel, without charge, for exclusive use of the City. This channel may be shared with other services with the understanding that the City has first priority on its usage.

- C. Provide at least 1 channel without charge for those educational uses as now or hereafter required by the Federal Communications Commission.
- D. Provide at least 1 channel for those public access uses as now or hereafter required by the Federal Communications Commission. To the extent time is available, access channels may also be used for other broadcast and nonbroadcast services.
2. The Company shall provide \$110,000.00, plus any additional funding reasonably required to establish a video production unit or such other substantially similar project or units as may be agreed upon by the City and the Company. This unit will be capable of broadcasting live remote programming, outfitted with all the equipment needed to produce live and/or taped productions. The video production unit will be staffed with personnel adequate to enable the Company to fulfill this agreement.
3. The company will provide the City with 35 hours of production time per month. Twenty-three hours will be allocated for coverage of Council meetings. Twelve hours will be allocated for other productions. However, if the Council meetings do not require 23 hours of production time per month, the remainder can be applied to other productions. If Council meeting coverage takes more than 23 hours per month, the company will absorb that overage. If the City does not use all of its production time in a given month, those hours may be carried over to the next month. No more than 15 hours of production time can be carried over from one calendar year to the next. The company will give the City additional production time as it becomes available. This production time may also be allocated for any other purposes as may be agreed upon by the City and the Company.
4. The company will contribute up to \$1,000.00 to Kirkwood Community College on an annual basis in exchange for the production for the City of as many video programs as the Kirkwood Communications Media and Public Relations Program curriculum allows.
5. The company will broadcast City information of interest to citizens on the Government Access Channel. The City will provide the information to the Company in an electronic format until it can be delivered electronically.
6. The cable system shall be capable of passing standard color television signals without the introduction of material degradation of color fidelity and intelligence from the head end input to the subscriber's television receiver.

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

113.17 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, provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted, and shall not be in conflict with the applicable laws of the State of Iowa or the United States.
2. **Use of System by City.** The City shall have the right, during the life of this chapter, of maintaining upon the poles or in the underground conduits of the company within the City limits wire and fixtures necessary for a traffic signal control system and/or a police and fire alarm system. Such wires and fixtures shall be installed and maintained at the sole expense of the City and shall at all times comply with all the reasonable rules and regulations of the company so that there may be a minimum danger of contact or conflict between the wires and fixtures of the company and wires and fixtures used by the City without cost to the City. The City shall also have the right to lease spectrum space from the company for these purposes at reasonable rates subject to the technical capability of the cable system.
3. **Emergency or Disaster.** In the case of any emergency or disaster declared by the Mayor, the company shall, upon the request of the Mayor, make available its facilities to the City for emergency use during the emergency or disaster period. The company shall, at its expense, provide the Mayor's office with the emergency override equipment activated by phone lock-out, or any other feasible method or methods.
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. 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 erect any pole, install any underground lines or conduit, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the Public Services Director, which approval shall

not be unreasonably withheld, and the City shall have and maintain the right to inspect the construction, operation and maintenance of the system by the company to insure the proper performance of the terms of 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, the City shall immediately give to the company 30 days' written notice to correct such violation, and in the event the company does not make such correction within 30 days from the receipt of such written notice, the company shall then 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 canceled.

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 nor more favorable than those contained herein.

113.18 ACTIVITIES PROHIBITED.

1. 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.

2. The company may not, as to rates, charges, service facilities, rules or regulations, grant preference or advantage to any person without prior approval of the Council. Nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules.

3. The company may assess a monetary penalty against a system user as a result of failure to pay a user's bill by a specified date. However, no subscriber service shall be discontinued without such procedure and hearing as required by law.

4. The company shall credit all subscriber or system user accounts for any loss of service that exceeds 24 hours. However, the subscriber must notify the company of the loss of service to receive the credit.

113.19 PAYMENTS TO THE CITY.

1. The company shall, during each year of operation under this chapter pay to the City 5% of all the company system's gross revenues. At the close of the company's fiscal year, an annual report shall be provided to the Council detailing all revenues received by the company and indicating the source of said revenues. The City reserves the right to require that additional information be submitted by

the company detailing properties and income relative to the company's services within the City for such period. If the FCC requirements change during the term of the franchise, the City reserves the right to change this 5% requirement in accordance with FCC regulations.

2. All payments as required by the company to the City shall be made monthly and shall be due 15 days after the close of the period. For determining time of payments, the City's fiscal year is July 1 through June 30.

113.20 RECORDS AND REPORTS. The company shall keep full, true, accurate and current books of account, which shall be made available for inspection to an auditor appointed by the City upon reasonable notice and during normal business hours. The City may order an audit of books and records, from time to time, and may also require the company, not more than once each year, to furnish the City a copy of an audit at the company's expense from an independent auditor.

113.21 SUBSCRIBER RATES AND CHARGES. The City reserves the right to regulate rates, should the Congress of the United States or any court or agency decide to return that power to the cities.

113.22 LOCAL OFFICE; COMPLAINT PROCEDURES; CUSTOMER SERVICE STANDARDS.

1. During the term of the franchise granted in this chapter, and any renewal thereof, the company shall maintain within the City a local business office or agent for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The provisions of this section shall be complied with if the company maintains a local business headquarters office staffed with adequate personnel no more than 10 miles from the corporate limits of the City, which office may be reached by local, toll free telephone call, and provides the City Manager's office with the name, address, and phone number of a person who will act as the company's agent to receive complaints regarding quality of service, equipment malfunctions, and similar matters.

2. The local office service centers shall be open during normal business hours and shall be conveniently located. The Company shall maintain a local, toll free, or collect call telephone access line which shall be open 24 hours per day, seven days per week. Trained customer service representatives shall be available to respond to customer telephone inquiries on the Telephone Access Line during Normal Business Hours. After Normal Business Hours, the Telephone Access Line may be answered by an automated response system. All inquiries received by the Company after Normal Business Hours shall be responded to on the following business day. The Company shall comply with the following minimum standards for operation of a telephone access line.

- A. During Normal Operation Conditions, the Telephone Access Line shall be answered by a customer service representative and the caller's concerns shall be initially addressed within thirty (30) seconds after a telephone connection is made between the caller and the Company. The thirty-second maximum includes wait time or time spent "holding" for a customer service representative.
 - B. During Normal Operating Conditions, if, after initially addressing a caller's concerns, the customer service representative determines that the call should be transferred to another representative of the Company, the transfer time shall not exceed thirty (30) seconds.
 - C. During Normal Operating Conditions, callers on the telephone access line shall not receive "busy signals" more than three percent (3%) of the time.
 - D. During Normal Operating Conditions, the minimum standards set forth in this section shall be met no less than ninety percent (90%) of the time, measured on a monthly basis.
 - E. If an historical record of subscriber complaints indicates a clear failure of the Company to comply with the minimum standards set forth in this section, then the City may require that the Company's level of compliance be measured through the use of surveys or any other reliable method chosen by the City.
3. The company shall by appropriate means, such as a card or brochure, as subscribers are connected or reconnected to the system, furnish information concerning the procedures for making inquiries and/or complaints, including the name, address, and local telephone numbers of the employee or employees or agent to whom such inquiries or complaints are to be addressed. The company shall by appropriate means require its employees or representatives to wear proper identification at all times. The City designates a City employee to be responsible for the continuing administration of the franchise, and implementation of complaint procedures.
 4. The Company shall comply with the following minimum standards regarding installation and repairs:
 - A. Standard Installations of Cable Service, under Normal Operating Conditions shall be completed within seven (7) days of the date ordered by the customer.
 - B. The Company shall commence repairs on Service Interruptions promptly, but no longer than twenty-four (24) hours after the Service Interruption becomes known to the Company.

C. All other repairs, maintenance or installations shall be commenced by the end of the following business day after the Company has been notified of a problem.

D. The Company may not cancel an appointment with a customer after the close of the business day prior to the date of a scheduled appointment. If the Company representative is running late for a scheduled appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted. When contacted, the appointment shall be rescheduled, as necessary, at a time that is convenient for the customer.

E. Minimum Compliance Percentage. During Normal Operating Conditions, the Company shall meet or exceed the minimum standards set forth in this section ninety-five percent (95%) of the time, measured on a monthly basis.

5. The Company shall provide the written information itemized below to all new customers. Such information shall also be provided at least once per year to all existing customers and shall be provided upon request of any customer. During Normal Operating Conditions, customers shall be notified at least thirty (30) days in advance of any changes to the information provided below. The following written information shall be provided:

A. An explanation of all programming services, products and other services offered by the Company.

B. An explanation of all prices and options for programming services, products and other services offered by the Company.

C. An explanation of all installation, repair and maintenance policies.

D. Instructions on how to use all programming services, cable related equipment and all other products and services, including but not limited to instructions on how to use Cable Services with VCR's and converters.

E. An explanation of all channel positions and corresponding programming on the Cable System.

F. An explanation of all billing and service complaint procedures and policies. Such information shall, at a minimum, explain the procedures for lodging a complaint with the Company and the procedures to be followed by the Company in investigating and resolving disputes.

The Company also shall immediately notify customers in writing and through announcements over the Cable System of any changes in rates, programming services or channel positions. During Normal Operating Conditions, such notice shall be provided to customers a minimum of thirty (30) days in advance of the implementation of such changes.

6. Customer invoices for Cable Service and any other products or the services provided by the Company shall be clear, concise and understandable. Invoices shall be fully itemized, including separate lines for basic and premium service charges, equipment charges, optional charges, refunds, rebates, credits and any other activity occurring on a customer's account during the invoice period.
7. The Company shall respond to written complaints regarding billing disputes from customers within thirty (30) days.
8. Refund checks shall be issued promptly, but no later than either:
 - A. The customer's next billing cycle following resolution of a dispute or request; or
 - B. Thirty (30) days;

whichever is earlier. If Cable Service is terminated, the Company need not make refunds until all equipment owned and supplied by the Company is returned. Credits for Cable Service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

113.23 PROTECTION OF PRIVACY.

1. Except to the extent allowed by Federal law for the purpose of investigation and uncovering of theft of premium channels, grantee 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. The company 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 CATV system within the City for the purpose of enabling such person or others to take or receive television signals, radio signals, pictures, programs or sounds, without payment to the owner of said system.
4. Any person violating or failing to comply with any of the provisions of this section shall be guilty of a misdemeanor and each day of violation shall be a separate offense..

5. The company shall follow subscriber privacy regulations established by the FCC in the Federal Cable Act.

113.24 PERFORMANCE EVALUATION SESSIONS.

1. **Special Reevaluation Sessions.** Special reevaluation sessions may be held at any time during the term of the franchise granted in this chapter, provided that both the City and the company shall mutually agree on the time, the place and the topics to be negotiated. All such reevaluation sessions shall be open to the public and announced in a newspaper of general circulation no less than 4 and no more than 20 days before each session.

2. **Topics to be Evaluated.** The following topics may be discussed at such reevaluation session and shall include but not be limited to: application of new technologies; system performances; services provided; programming offered; customer complaints; privacy and human rights; amendments to this chapter; under-grounding progress; and judicial and FCC rulings.

113.25 CITY RIGHTS TO PURCHASE SYSTEM.

1. **City Purchase of System upon Revocation.** In the event that the City terminates the franchise pursuant to appropriate provisions of this chapter, the City shall have the right to purchase the cable system at a price not to exceed its then fair market value. The fair market value shall be determined by the City in accordance with generally accepted appraisal and accounting principles. Under no circumstances shall any valuation be made for "good will" or any right or privilege granted by this chapter.

2. **City Purchase of System upon Expiration.** The City shall have the right to purchase the cable system if the franchise is terminated at the end of the franchise term. Should the City decide to purchase the system, it shall do so at a price not to exceed its then fair market value. In determining the fair market value of the system, the original cost of all tangible and intangible property, as well as the salvage value, the book value, the replacement cost, cash flow, and other factors may be considered.

3. **Review of Purchase Price.** The Council reserves the right to review the purchase price of any transfer or assignment of the system, and any assignee to this chapter expressly agrees that any negotiated sale value which the Council deems unreasonable will not be considered in the rate base for any subsequent request for rate increases. Reasonableness of purchase price will be determined in accordance with criteria listed in subsections 1 and 2 applying wherever a sale occurs following revocation; subsection 2 applying whenever the system is sold under any other circumstances.

4. Continuity of Service Mandatory. It shall be 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 granted in this chapter, or the City elects to purchase the system, the company shall do everything in its power to ensure 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 continuity of service to all subscribers.

5. Removal of Equipment. At the expiration of the term for which the franchise is granted, or upon its termination and cancellation, as provided 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.

113.26 OFFER OF CONVERTERS. The company has offered to provide converters, and the City by the ordinance codified in this chapter accepts such offer, and by the terms of this chapter the company is herewith required to provide such converters.

113.27 SYSTEM TESTING. The company shall promptly file with the City copies of all system testings, either required by the FCC or filed with the FCC. Such copies shall be filed with the Clerk within 14 days either of the completion of such testing procedures or of filing the same with the FCC.

113.28 ADDITIONAL REGULATIONS. The City reserves the right to adopt, in addition to the provisions contained in this chapter, such additional regulations as it shall find necessary in the exercise of its police power; provided, however, that such regulations are reasonable and not materially in conflict with the privileges granted in this chapter. However, notwithstanding and in addition to the foregoing, the City shall retain the right to amend this chapter, including regulation of rates, to correspond with changes in State, local, or Federal statutes and administrative rules and regulations. This provision will be exercised in good faith by the Council.

113.29 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 30 days after the City has given the company written notice of such violation, failure or default, the same shall be cause for the forfeiture or revocation of this chapter and the termination of all rights hereunder, provided, however, any delay in correcting such violation which is caused by factors beyond the control of the company shall not be included in computing the length of the continuance of such violations. In the event of the bankruptcy or receivership of the company, all rights herein given to the company shall, at the option of the City, be forfeited and terminated.

113.30 PROGRAM CONTENT RESTRICTIONS.

1. In addition to providing basic cable television service consisting of broadcast, locally originated, access, and automated signals, the company may offer subscribers optional services on a per-program or per-channel basis (pay cable). The company shall not, however, program or in any way display any programming that violates applicable obscenity laws.
2. Among the company's offered programming services shall be an option that would allow a subscriber to purchase a limited basic service consisting of: some or all locally receivable broadcasts, PBS, all access channels, all C-span channels, a preview guide and their successors.
3. The company shall not charge a subscriber for any programming services without the subscriber's prior consent to receive and pay for such programming.

113.31 EMPLOYMENT REQUIREMENT. The company shall not refuse to hire, nor discharge from employment, nor discriminate against any person regarding compensation, terms, conditions, or privileges of employment because of sex, race, color, creed, handicap, age, or national origin. The company shall submit a copy of its affirmative action program to the City within 30 days subsequent to the effective date of the ordinance codified in this chapter, and at least annually thereafter during the term of the franchise.

113.32 CHANGES AND AMENDMENTS. The Council reserves the right to change or amend this chapter at any time during the term of the franchise. This provision will be exercised in good faith by the Council.

113.33 BINDING ON COMPANY. The provisions, terms, and conditions of this chapter shall be binding upon the company, successors, heirs, and assigns upon acceptance hereof by the company.

113.34 SERVICES TO PERSONS WITH DISABILITIES. The company shall make every reasonable good-faith effort to provide services to persons with disabilities as is reasonably possible employing the latest state-of-the-art techniques and equipment.

113.35 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 communications 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 fact 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.

113.36 MOST FAVORED NATION. 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.

(Ord. 07-02 – Aug. 07 Supp.)

EDITOR'S NOTE

Ordinance No. 98-11 adopting a cable television franchise for the City was passed and adopted on June 18, 1998.