

## CHAPTER 113

# CABLE TELEVISION REGULATIONS

113.01	Definitions	113.32	Capital Equipment Fee
113.02	Franchise Required	113.33	Television Broadcast Signals
113.03	Grant	113.34	Leased Access Channels
113.04	Length of Franchise	113.35	Community Channel Facilities
113.05	Significance of Franchise	113.36	Additional Service
113.06	Rights Reserved to the City	113.37	Technical Standards
113.07	Application For Franchise	113.38	Filing of Maps
113.08	Acceptance and Effective Date	113.39	Franchise Fee
113.09	Geographical Coverage	113.40	Quarterly Payments
113.10	Conditions of Street Occupancy	113.41	Limitation on Franchise Fee Actions
113.11	Restoration of Public Ways	113.42	Franchise Fee Audit
113.12	Relocation at Request of City	113.43	Franchise Fee Increases
113.13	Safety Requirements	113.44	Rates and Charges
113.14	Underground and Above-Ground Installation	113.45	Renewal of Franchise
113.15	Compliance To Codes	113.46	Transfer of Franchise
113.16	Interference with Other Utilities	113.47	City's Right to Purchase System
113.17	Moving Permits	113.48	Right of Inspection of Construction
113.18	Authority to Trim Trees	113.49	New Developments
113.19	Service Area	113.50	Other Business Activities
113.20	Iowa One Call	113.51	Private Easements
113.21	Extension of Service	113.52	Compliance and Monitoring
113.22	Subscriber Charges for Extensions Of Service	113.53	Insurance and Indemnification
113.23	Service to Public Buildings	113.54	Enforcement of Franchise
113.24	Customer Service Standards	113.55	Termination of Franchise
113.25	System Design	113.56	Security Fund
113.26	Emergency Alert	113.57	Faithful Performance Bond
113.27	Switching Device	113.58	Violations and Penalties
113.28	Parental Control Devices	113.59	Actions of Parties
113.29	Termination of Service	113.60	Equal Protection
113.30	Community Channel	113.61	Notice
113.31	Educational and Governmental Access Channels		

**113.01 DEFINITIONS.** The following words and phrases, when used herein, for the purposes of this chapter, have the meanings ascribed to them in this section:

1. "Basic cable" is the lowest priced tier of service that includes the retransmission of local broadcast television signals.
2. "Cable Act" collectively means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, as amended.
3. "Cable operator" means any person who (i) provides cable service over a cable system or (ii) otherwise directly controls or is responsible for, through any arrangement, the management and operation of such a cable system.
4. "Cable service" means (i) the one-way transmission to subscribers of video programming or other programming service and (ii) subscriber interaction, if any, which is required for the selection of such video programming or any other lawful communications service.
5. "FCC" means Federal Communications Commission or successor governmental entity thereto.
6. "Franchise" means the initial authorization or renewal thereof issued by the City whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the system.

7. "Grantee" means any person granted a franchise hereunder, or the lawful successor, transferee, or assignee thereof
8. "Gross revenues" means any and all revenue received from subscribers in the City by the Grantee from the operation of the system in the service area; provided, however, such phrase does not include any fees or taxes which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency and which are collected by the Grantee on behalf of such governmental unit or agency.
9. "Headend" means the land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a broadband telecommunications network.
10. "House drop" means a cable that connects each building or home to the nearest feeder line of the cable network.
11. "Normal business hours" means those hours during which most similar businesses in the community are open to serve subscribers. In all cases, "normal business hours" includes some evening hours at least one night per week and/or some weekend hours. The Grantee will notify its subscribers and the City of its normal business hours.
12. "Normal operating conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
13. "Outlet" means the point of connection of the cable or wire to a television or radio receiver.
14. "Person" means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.
15. "Private property" means all property, real, personal, or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.
16. "Property of the Grantee" means all property, real, personal or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.
17. "Public access channel" means (i) channel capacity designated for public use and (ii) facilities and equipment for the use of such channel capacity.
18. "Public property" means all property, real or personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.
19. "Public way" means the surface of, and the space above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the service area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. "Public way" also means any easement now or hereafter held by the City within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and includes other easements or rights-of-way as shall within their proper use and meaning entitle the City and the

Grantee to the use thereof for the purpose of installing and operating the Grantee's system over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the system.

20. "Service area" means the present municipal boundaries of the City and includes any additions thereto by annexation or other legal means.

21. "Service interruption" means the loss of picture or sound on one or more channels.

22. "Service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.

23. "Subscriber" means a person or user of the system who lawfully receives communications and other services therefrom with the Grantee's express permission.

24. "System" or "cable television system" or "cable system" means a system of antennas, cables, wires, lines, fiber optic cable, towers, waveguides or other conductors, converters, equipment or facilities, used for producing, receiving, amplifying, storing, processing or distributing audio, video, digital or other forms of signals to and from subscribers.

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

**113.03 GRANT.** The purpose of this chapter is to specify requirements for the establishment, construction, operation, and maintenance of cable television in the City pursuant to Chapter 364 of the *Code of Iowa* and applicable Federal law. If a new applicant submits a proposal acceptable to the Council, meets the requirements of this chapter and those of the FCC, and receives a majority of the votes cast in a franchise election, the City may then proceed to enter into a nonexclusive franchise agreement with such prospective Grantee, subject to the provisions of this chapter. If the incumbent operator submits a proposal acceptable under the terms of the Cable Act of 1992 as amended and meets the requirements of the FCC, the City shall proceed to fulfill its obligations under Section 626 of the Cable Act of 1992.

**113.04 LENGTH OF FRANCHISE.** The term of the franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be determined by the Council from the effective date of such franchise or the effective date of any transfer or assignment thereof in accordance with Section 113.46 of this chapter. The term of agreement will be specified in the Franchise Agreement. Such term shall not exceed ten (10) years. The City shall award a nonexclusive franchise to construct, erect, operate, and maintain in, upon, along, across, above, over and under the streets, alleys, 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 conductors and fixtures necessary for the operation and maintenance in the City of a cable system, and to furnish and to sell service from such system to the inhabitants of the City pursuant to the terms of this chapter.

**113.05 SIGNIFICANCE OF FRANCHISE.**

1. Franchise Nonexclusive. Any franchise granted hereunder by the City shall not be exclusive and the City reserves the right to grant a similar franchise to any person at any time.

2. Franchise Amendable. The scope of any franchise granted hereunder shall be deemed amendable from time to time to allow the Grantee to innovate and implement new services and developments.
3. Privileges Must Be Specified. No privilege of exemption shall be inferred from the granting of any franchise, unless it is specifically prescribed. Nothing in this chapter shall be deemed to require the granting of a franchise when, in the opinion of the Council, it would not be in the public interest to do so.
4. Authority Granted. Any franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain in, upon, along, above, over and under public ways, as defined in Section 113.01 herein, which have been or may hereafter be dedicated and open to the public use in the City, towers, antennas, poles, cables, electronic equipment and other network appurtenances necessary for the operation of a cable television system in the City, subject to the requirements of this chapter.
5. Previous Rights Abandoned. A franchise granted hereunder shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by a Grantee or any successor pertaining to the construction, operation or maintenance of a cable communications system in the City. All construction, operation, and maintenance by the Grantee of any cable system in the City shall be under the franchise and not under any other right, privilege, power, immunity, or authority.
6. Rules and Regulations. The Grantee shall at all times during the life of any franchise granted hereunder be subject to all lawful exercise of the police power by the City and other duly authorized regulatory State and Federal bodies and shall comply with any and all ordinances which the City has adopted or shall adopt applying to the public generally and to other grantees.
7. Pole Use Agreements Required. Any franchise granted hereunder shall not relieve the Grantee of any obligations involved in obtaining pole or conduit use agreements from the gas, electric, and the telephone companies or others maintaining poles or conduits in the streets of the City, whenever the Grantee finds it necessary to make use of said poles or conduits.

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

1. Right of Amendment Reserved to City. The City may from time to time add to, modify, or delete provisions of this chapter as it shall deem necessary in the exercise of its regulatory powers, provided that such additions or revisions are reasonable and do not place an undue financial burden on the Grantee. Such additions or revisions shall be made only after a public hearing for which the Grantee shall have received written notice at least thirty (30) days prior to such hearing.
2. No Impairment of City's Rights. Nothing herein shall be deemed or construed to impair or affect in any way to any extent the right of the City to acquire the property of the Grantee through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right to eminent domain.
3. Grantee Agrees to City's Rights. The City reserves every right and power which is required to be reserved or provided by an ordinance of the City, and the Grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or powers which have been or will be enacted or established.

4. City's Right of Intervention. The City shall have the right to intervene and the Grantee specifically agrees by its acceptance of the franchise not to oppose such intervention by the City in any suit or proceeding in which the franchise is at issue to which the Grantee is a party.
5. Powers of the City. Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the City.
6. City's Transfer of Functions. Any right or power in or duty imposed upon any elected official, officer, employee, department, or board of the City shall be subject to transfer by the City to any other elected official, officer, employee, department, or board.
7. City's Right of Inspection. The City reserves the right, during the life of any franchise granted hereunder, to inspect and supervise all construction or installation work performed, subject to the provisions of this chapter and to perform network measurements to insure compliance with the terms of this chapter.

**113.07 APPLICATION FOR FRANCHISE.** No new franchise may be granted unless the applicant has successfully completed the application procedure in accordance with filing instructions promulgated by the City:

1. Filing Fee. Payment of a nonrefundable filing fee to the City, in an amount set by resolution of the Council, which sum shall be due and payable at the time of the submission of the application.
2. Content. All applicants must complete an application which shall include (but not be limited to) the following:
  - A. Name and Address. The name and business address of the applicant, date of application, and signature of applicant or appropriate corporate officer(s).
  - B. Description of Proposed Operation. A general description of the applicant's proposed operation, including (but not limited to) business hours, operating staff, maintenance procedures beyond those required in this chapter, management and marketing staff complement and procedures, and, if available, the rules of operation for public access.
  - C. Signal Carriage. A statement of the television and radio services to be provided, including both off-the-air and locally originated signals.
  - D. Special Services. A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the Grantee for the public, governmental and educational channels required to be made available by the provisions of this chapter.
  - E. Corporate Organization. A statement detailing the corporation organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
  - F. Stockholders. A statement identifying the number of authorized outstanding shares of applicant's stock including a current list of the names and current addresses of its shareholders holding five percent (5%) or more of the applicant's outstanding stock.
  - G. Intra-Company Relationships. A statement describing all intra-company relationships of the applicant, including parent, subsidiary, or affiliated companies.
  - H. Agreements and Understandings. A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other

person with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of proposal submittal.

I. Financial Statement. A copy of the financial statements for the two (2) previous fiscal years.

J. Financial Projection. A five-year operations pro forma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets and annual levels of subscriber penetration. Costs and revenues anticipated for voluntary services shall, if presented, be incorporated in the pro forma as required in this chapter, but shall be separately identified in the pro forma.

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

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

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

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

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

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

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

### **113.08 ACCEPTANCE AND EFFECTIVE DATE.**

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

- A. A statement by the Grantee of the unconditional acceptance of the franchise;
- B. A certificate of insurance as set forth in Section 113.53;

C. A performance bond in the penal sum of \$1,000,000.00, as set forth in Section 113.57; and

D. Reimbursement to the City for the costs of publication of the franchise ordinance and the holding of the election connected therewith.

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

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

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

5. Grantee Accepts Terms of Franchise. The Grantee acknowledges by the acceptance of the franchise and the terms therein and in this chapter that it has carefully read said terms and conditions and it is willing to and does accept all other obligations of such terms and conditions and further agrees that it will not claim that any provision of this chapter or any franchise granted hereunder is unreasonable, arbitrary, invalid or void.

6. Forfeiture of Proposal Bond. Should the Grantee fail to comply with the terms of this section, it shall acquire no rights, privileges, or authority under this chapter whatsoever, and the amount of the proposal bond or certified check in lieu thereof, submitted with its application, shall be forfeited in full to the City as liquidated damages.

**113.09 GEOGRAPHICAL COVERAGE.** The Grantee shall provide a cable communications system in such manner as to pass and provide adequate tap off facilities for every single-family dwelling unit, multiple dwelling unit, or other residential unit and commercial and industrial establishment within the service area.

**113.10 CONDITIONS OF STREET OCCUPANCY.** All transmission and distribution structures, poles, other lines and equipment installed or erected by the Grantee pursuant to the terms hereof shall be so located as to cause minimum interference with the proper use of public ways, and with the rights and reasonable convenience of property owners who own property which adjoins any of said public ways. A Grantee shall first obtain the approval of the City prior to commencing construction on the streets, alleys, public grounds, or places on a form provided by the City. A Grantee shall not open or disturb the surface of any street, sidewalk, driveway, or public place for any purpose without having first obtained a permit to do so in the manner provided in this Code of Ordinances. All excavations shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

**113.11 RESTORATION OF PUBLIC WAYS.** If during the course of Grantee's construction, operation, or maintenance of the system there occurs a disturbance of any public way by the Grantee, the Grantee shall, at its own expense, replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance and in compliance with the City's Street Replacement Policy.

**113.12 RELOCATION AT REQUEST OF CITY.** Upon its receipt of reasonable advance notice, not to be less than thirty (30) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way or remove from the public way any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes or any other type of structures or improvements by the City; but the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any person using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, the City may make application for such funds on behalf of the Grantee.

**113.13 SAFETY REQUIREMENTS.** Construction, installation, and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other Federal, State, and local regulations and the *National Electric Safety Code*. The system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

**113.14 UNDERGROUND AND ABOVE-GROUND INSTALLATION.**

1. Pole Agreements. The Grantee may lease, rent or in any other manner by mutual agreement obtain the use of towers, poles, lines, cables and other equipment and facilities from utility companies operating within the City, and use towers, poles, lines, cables, and other equipment and facilities for the system. When and where practicable, the poles used by the Grantee's distribution system shall be those erected and maintained by such utility companies operating within the City, provided mutually satisfactory rental agreements can be reached. It is the City's desire that all holders of public franchises in the City cooperate with the Grantee and allow the Grantee the use of their poles and pole line facilities whenever possible so that the number of new or additional poles installed in the City may be minimized.

2. Grantee's Poles. The Grantee shall have the right to erect, install, and maintain its own towers, poles, guys, anchors, underground conduits and manholes as may be necessary for the proper construction and maintenance of the antenna site, headend and distribution system, providing that the Grantee has at the worksite the necessary City permit(s) or copy thereof, for scheduled work, obtained in advance from the appropriate City Department.

3. Rent of Grantee's Poles. The Grantee shall have the right to establish terms, conditions, and specifications governing the form, type, size, quantity and location of equipment of others on its poles, and shall have the further right to charge a fair rental for attachment space or spaces occupied by the said equipment and plant of others, except that no rent shall be paid by the City for its attachment to the Grantee's poles. The City shall pay any costs incurred by the Grantee in providing space for the City's attachments, including any necessary rearrangements of the Grantee's equipment and plant to provide room for City attachments.

4. Underground Facilities. In those areas of the City where transmission or distribution facilities of both telephone and power companies are underground or hereafter may be placed underground, the Grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground to the maximum extent the then existing technology permits, in accordance with the most recent *National Electrical Code*, the *Bureau of Standards Handbook No. 81*, and the *Telephone System Practices Governing Joint Attachment Practices*, and their successor documents, as well as in conformance with all applicable State and municipal ordinances and codes. If and when necessary, amplifiers and/or transformers in the Grantee's transmission and distribution lines shall be in appropriate housings on the surface of the ground. Such housings and the location and construction of all work required or pursuant to this section

shall be approved in advance. Even when not required, underground installation is preferable to the placing of additional poles.

**113.15 COMPLIANCE TO CODES.** All transmission and distribution structures, lines, and equipment erected by the Grantee in the City shall be located so as not to endanger or interfere with the normal use of streets, alleys or other public ways and places so as to cause minimum interference with the rights or reasonable convenience of the general public and adjoining property owners and so as not to interfere with existing public utility installations and so as to comply with the most recent *National Electrical Code*, the *Bureau of Standards Handbook No. 81*, and the *Telephone System Practices Governing Joint Attachment Practices* and their successor documents, as well as in conformance with all applicable State and municipal ordinances and codes. The Grantee shall make available to the City maps, plats, and records of locations and character of all facilities for inspection. In the case of any disturbance by the Grantee or its equipment of pavement, sidewalks, driveway, lawn or other surfacing, the Grantee shall, at its expense and in the manner required by the City, promptly replace and restore all such surfacing to as near as reasonably possible its prior or better condition and in compliance with the City's Street Replacement Policy. The construction, installation, operation, maintenance, and/or removal of the Cable Communications System shall meet all of the following safety, construction, and technical specifications and codes and standards:

- *Occupational Safety and Health Administration Regulations (OSHA)*
- *National Electric Code*
- *National Electrical Safety Code (NESC)*
- *National Cable Television Standard Code*
- All Federal, State, and Municipal construction requirements, including FCC Rules and Regulations
- Utility construction requirements
- All building and zoning codes and all land use restrictions as the same exist or may be amended hereafter

**113.16 INTERFERENCE WITH OTHER UTILITIES.** The Grantee shall not place poles, conduits, or other fixtures above or below ground where the same shall interfere with any gas, electric, telephone fixtures, water hydrants or other utilities, and all such poles, conduits or other fixtures above or below ground shall be so placed as to comply with all the requirements of the City.

**113.17 MOVING PERMITS.** The Grantee shall, on request of any persons holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings. The expense of such temporary removal shall be paid in advance by the person requesting the same, and the Grantee shall be given not less than five (5) working days' advance notice to arrange for such temporary changes.

**113.18 AUTHORITY TO TRIM TREES.** The Grantee shall have the authority, under the supervision and direction of the City, to trim trees and other natural growth overhanging any of its cable system in the street or alley right-of-way so as to prevent branches from coming in contact with the Grantee's wires, cables and other equipment. The Grantee shall reasonably compensate the City or property owner for any damages caused by such trimming or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the cable system undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the City or property owner pursuant to the terms of this section.

**113.19 SERVICE AREA.** The Grantee shall design and construct the cable system in such a manner as to pass by and provide adequate tap-off facilities for every single-family dwelling, multiple family dwelling, apartment, school and government building located within the City limits, and every business establishment located within 150 feet of any single-family dwelling, multiple family dwelling, apartment, school, retirement home and government building located within the City limits.

**113.20 IOWA ONE CALL.** Grantee shall participate in and use Iowa One Call and ensure that cable is buried at a depth of eighteen (18) inches. Temporary drops will be buried within two (2) months of installation, weather permitting.

**113.21 EXTENSION OF SERVICE.** The Grantee shall, at its expense, promptly extend its system to have service available to all residents of:

1. Newly annexed areas to the City not then served by a system where the average density is at least 30 potential subscribers per lineal mile of proposed trunk and feeder cable route.
2. New housing areas developed within the corporate limits of the City.
3. Any new single-family dwelling unit, multiple dwelling unit, or other residential unit or commercial establishment within the corporate limits of the City on the effective date of the franchise agreement with the Grantee shall be extended cable simultaneously with electric power and telephone utilities.

**113.22 SUBSCRIBER CHARGES FOR EXTENSIONS OF SERVICE.** No subscriber shall be refused service arbitrarily. However, in areas annexed to the City, after the effective date of the franchise granted to the Grantee, located more than 150 feet of distance from distribution cable to connection of service to subscribers or with a density of less than 30 residences per lineal mile of cable-bearing trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and subscribers in the area in which cable service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals 30 residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

**113.23 SERVICE TO PUBLIC BUILDINGS.** The Grantee shall, upon request, provide without charge one outlet of basic service and expanded basic service to those public buildings which shall include, but are not limited to, the following locations:

- City Hall or Municipal Building
- Police Station
- Fire Station
- Public Library
- Water/Sewer Maintenance Building
- Williamsburg Community High School
- Lutheran Interparish School
- Williamsburg Community Elementary School

- Williamsburg Community Middle School

The outlets shall not be used to distribute or sell services in or throughout such buildings. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to those arising from copyright liability. If additional outlets are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials.

#### **113.24 CUSTOMER SERVICE STANDARDS.**

1. System Office Hours and Telephone Availability. The Grantee will maintain a local, toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, seven days a week, including holidays. Trained representatives of the Grantee will be available to respond to subscriber telephone inquiries during normal business hours, as defined in Section 113.01. After normal business hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after normal business hours must be responded to by a trained representative of the Grantee on the next business day. Under normal operating conditions, as defined in Section 113.01, telephone answer time by a customer representative, including wait time, will not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed 30 seconds. These standards will be met no less than ninety percent (90%) of the time under normal operating conditions, as measured by the Grantee on a quarterly basis. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless a historical record of complaints indicates a clear failure to comply with such standards. Under normal operating conditions, the subscriber will receive a busy signal less than three percent (3%) of the time. Customer billing payment location will be open at least during normal business hours and will be conveniently located in the City. The local office shall provide a customer service drop box to be located within the City limits for the after-hours payment of monthly bills.

2. Installation, Outages and Service Calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time, as measured by the Grantee on a quarterly basis:

A. Standard installation will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 150 feet from the existing distribution system.

B. Excluding normal operating conditions, beyond its control, the Grantee will begin working on service interruptions, as defined herein, promptly and in no event later than 24 hours after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.

C. The Grantee will provide "appointment window" alternatives for installations, service calls and other installation activities, which will be either a specific time or, at maximum, a four-hour time block during normal business hours.

D. The Grantee shall not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment. If a representative of the Grantee is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the subscriber.

3. Notifications to Subscribers. The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- products and services offered;
- prices and options for services and conditions of subscription to programming and other services;
- installation and service maintenance policies;
- instructions on how to use the service;
- channel positions of programming carried on the system; and
- billing and complaint procedures, including the address and telephone number of the local City's cable office.

Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible and in writing. Notice will be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify subscribers 30 days in advance of any significant changes in the other information required by this section.

4. Billing. Bills will be clear, concise, and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the Grantee will respond to a written complaint from a subscriber within 30 days after the receipt of the complaint. Refund checks will be issued promptly, but no later than either: (i) the subscriber's next billing cycle following resolution of the complaint or 30 days, whichever is earlier; or (ii) the return of the equipment supplied by the Grantee if service is terminated. Credits for service will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.

5. Local Office. A business and service office, conveniently located within the City, shall be open during normal business hours, and adequately staffed to accept subscriber payments and respond to service requests and complaints. In lieu of a local office, the Grantee may provide a secure weather-tight payment drop box that shall be located in the City on a site readily accessible to the general public and shall designate one employee to live within fifteen (15) miles of the City and shall specify a work report site for the employee.

6. Automatic Payments. If feasible and practical, the Grantee will undertake all necessary steps to enable those interested subscribers to make automatic monthly payments through a local bank.

7. Deposits. Any deposit required by Grantee shall bear interest at the current lending rate.

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

9. Disconnection. The Grantee shall disconnect service in accordance with FCC regulations.

10. Reconnections. The Grantee shall restore service to customers wishing restoration of service, provided customer shall first satisfy any previous obligations owed.

11. Downgrades. Subscribers shall have the right to have cable service disconnected or downgraded in accordance with FCC regulations. The billing for such service will be effective

immediately and such disconnection or downgrade shall be made as soon as practicable. A refund of unused service charges shall be paid to the customer within forty-five (45) days after the date of termination of service.

12. Termination of Service. Within thirty (30) days after termination of service to any subscriber for any reason, the Grantee shall, upon the subscriber's written request, promptly remove all its facilities and equipment from the subscriber's premises without charge.

13. Notification to City of Service Interruptions. The Grantee shall promptly notify the Clerk, in writing, or if appropriate, by oral communication, of any significant interruption in the operation of the system.

14. Subscriber Credit for Service Interruption. Upon service interruption of subscriber's cable service, the following shall apply: For service interruptions of over 24 hours and up to seven days, the Grantee shall provide at the subscriber's request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each 24-hour period service is interrupted for four (4) or more hours for all affected subscribers.

15. Service Repair Standards. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled service interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system. A written log or an equivalent stored in computer memory and capable of access and reproduction shall be maintained for all service interruptions and requests for cable service as required by this chapter.

16. Refund to Subscribers. If the Grantee fails to provide any material service requested by a subscriber in accordance with the current FCC standards, the Grantee 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. If any subscriber terminates for any other reason, the Grantee shall refund the unused portion of any prepaid subscriber service fee on a daily pro rata basis. Any disputes arising under this section shall be finally resolved in accordance with Section 113.52(6) of this chapter.

17. Channel Lineup Card. The Grantee shall prepare and make available at no charge to the subscribers an accurate and up-to-date channel and radio frequency guide listing the cable frequencies and channels of all FM radio and television signals and services available over the cable system. The channel lineup card shall be distributed to every subscriber, at least once each year, and within thirty (30) days after a change or addition in channels or frequency uses or services offered.

18. Customer Handbook. Grantee shall provide written customer policies or a handbook to all new subscribers and, thereafter, upon request. Grantee's written customer policies or handbook shall, at a minimum comply with all notice requirements in this chapter and those promulgated by the FCC. If Grantee's operating rules are changed, subscribers shall be notified in a timely manner. Rate and consumer complaint information will be distributed annually to subscribers.

19. Subscriber Privacy. The Grantee shall be constantly alert to possible abuses of the right of privacy or other legal rights of any subscriber, programmer, or general citizen resulting from any device or signal associated with the cable system. The possibility of such abuse shall be discussed at every scheduled review session. The Grantee shall abide by current Federal law and FCC regulations and Section 631 of the Cable Act regarding protection of subscriber privacy.

20. Discriminatory or Preferential Practices. The Grantee shall not, in making available the services or facilities of its system, or in its rules or regulations, or in any other manner, make or

grant preferences or advantages to any subscriber or potential subscriber, or to any user or potential user and shall be subject any person to any prejudice or disadvantage based on said person's race, color, national original or gender. This provision shall not prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof, nor the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification shall be entitled.

**113.25 SYSTEM DESIGN.** The Grantee will make available a minimum of 31 channels of programming. The system will be designed so as to be two-way capable, and will be constructed in a manner that will meet or exceed FCC specifications.

**113.26 EMERGENCY ALERT.** The Grantee shall, in the case of any emergency or disaster, make its entire system available without charge to the City or to any other governmental or civil defense agency that the City shall designate. The system shall be engineered in accordance with FCC regulations to provide an audio alert system to allow authorized officials to automatically override the audio signal on all channels and transmit and report emergency information. The City shall hold the Grantee, its agents, employees, officers and assigns hereunder harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorney's fees and costs.

**113.27 SWITCHING DEVICE.** The Grantee, upon request from any subscriber, shall install at cost a switching device to permit a subscriber to continue to utilize the subscriber's television antenna. The Grantee shall not require the removal, or offer to remove, any subscriber's antenna lead-in wire.

**113.28 PARENTAL CONTROL DEVICES.** Grantee shall provide to subscribers, upon request, at cost, parental control devices that allow any one channel to be locked out. Such devices shall block both the video and the audio portion of such channel to the extent that both are unintelligible. The lockout device described herein shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided.

**113.29 TERMINATION OF SERVICE.** Within thirty (30) days of termination of service to any subscriber for any reason, the Grantee shall, upon the subscriber's written request, promptly remove all its facilities and equipment from the subscriber's premises without charge.

**113.30 COMMUNITY CHANNEL.** The Grantee shall provide at least one dedicated channel for community programming. Whenever the channel is in use for more than 50 percent of prime time (as defined in Section 76.5n of the FCC rules and regulations) and more than 50 percent outside of prime time over a three-month period, with at least 50 percent of the programming being original and not duplicated, and there is demand for use of additional channels for the same purpose, the Grantee shall have six (6) months to make an additional channel available for the same purpose, provided, however, that the cable system has been rebuilt-upgraded to a capacity of 75 channels and that said access channel does not interfere with existing use of the channel capacity on the cable system. In no event shall the Grantee be required to provide more than three (3) channels for community programming.

**113.31 EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS.** If requested by the City, Grantee will provide one channel to be used for educational and governmental access. On or before the completion of any upgrade or construction of the cable system, the Grantee will activate this channel from the Williamsburg Public Library and purchase the necessary equipment and modulators to activate the return.

**113.32 CAPITAL EQUIPMENT FEE.** During the term of a franchise and if authorized by the Council, the Grantee shall, not earlier than sixty (60) days after the final adoption of an ordinance

granting a franchise to the cable operator by the Council, provide ongoing capital support for the community channel capital equipment and facilities in the amount not to exceed twenty-five cents (25¢) per subscriber per month for the entire term of this franchise payable in the same manner as franchise fee payment pursuant to Section 113.39 hereof. The City acknowledges that this amount shall not be considered gross revenues subject to the payment of franchise fees pursuant to Section 113.39 hereof. Furthermore, payments of this capital equipment shall not be deemed to be “franchise fees” within the meaning of Section 622 of the Cable Act and such payment shall not be deemed to be “payments-in-kind” or any involuntary payments chargeable against the compensation to be paid to the City by Grantee pursuant to Section 113.39 hereof, or part of the compensation to be paid to the City by Grantee pursuant to Section 113.39 hereof. The Grantee may collect this fee from subscribers as a separate line item on the monthly cable service bills. The City reserves the right to petition the Grantee to increase the capital equipment fee to amount in excess of 25¢, but less than \$1.00, provided that such request is submitted in writing to the Grantee. The City shall also notify the cable subscribers by means of a public notice in a local newspaper that such request has been submitted to the Grantee and shall specify the reasons for the increase in the capital equipment fee. The Grantee shall not unreasonably deny the City’s request for the increase in the capital equipment fee. If the Grantee denies the request, the Grantee shall specify the reasons for such decision in writing to the City.

**113.33 TELEVISION BROADCAST SIGNALS.** The Grantee shall provide, as part of its cable television service, the signal of all television broadcast signals consistent with the rules and regulations of the FCC and all other applicable laws, rules or regulations. The Grantee’s system shall be designed, engineered, and maintained so as not to interfere with the television and radio reception of residents of the City who are not subscribers to the system. The Grantee shall provide, as a part of its cable television service, the signals of a grade “B” contour.

**113.34 LEASED ACCESS CHANNELS.** The Grantee shall provide at least one channel for lease on a part-time basis in accordance with FCC regulations. The Grantee cannot exercise program controls over leased channels, but may adopt rules governing the leasing of channel space which: (i) provides for access on a first-come, non-discriminatory basis; (ii) prohibits the presentation of lottery information and obscene or indecent matter; (iii) requires sponsorship identification; (iv) specifies a reasonable rate schedule; and (v) permits public inspection of the record of the names and addresses of all persons or groups requesting time, which record shall be retained for a period of at least two (2) years.

**113.35 COMMUNITY CHANNEL FACILITIES.** The Grantee shall augment the television programming available by active promotion and assistance for locally originated programs. The Grantee shall, for a reasonable charge, provide the necessary information to the public on the use of the community channels and shall provide, on request, assistance to any person seeking to develop the necessary skills to produce programs on the community channels. Further, the Grantee shall cooperate with any person wishing to organize training workshops in connection with the use of community channels.

**113.36 ADDITIONAL SERVICE.** The Grantee is encouraged to make available such additional video, audio, radio, digital, point-to-point service, and other services as are requested by subscribers and programmers who are willing to pay for such services, provided that such services are technologically and economically feasible. If no applicable rate exists when such a service is requested, the rate change procedures established in this chapter shall apply. The Grantee shall undertake to apply for a certificate of compliance or waiver necessary to permit the provision of a specific additional service. Should a dispute arise over any matter regarding additional services, the dispute may be resolved in accordance with the provisions of this chapter relating to methods of resolving disputes. Nothing in this section shall preclude the offering of such new service on a temporary or experimental basis.

**113.37 TECHNICAL STANDARDS.** The cable system shall be maintained and operated in conformance with FCC rules and regulations. Any FCC technical standards or guidelines related to the cable communications system and facilities shall be deemed to be regulations under this chapter. At such time as the FCC does not regulate technical standards, Grantee will continue to comply with the FCC standards which were effective prior to such discontinuance of regulation by the FCC.

**113.38 FILING OF MAPS.** Upon request of the City, the Grantee shall file with the City strand maps showing the location and nature of all property of the Grantee within the City.

**113.39 FRANCHISE FEE.** As compensation for the franchise granted herein and in consideration for the use of the streets and public ways of the City for the construction, operation, maintenance, and reconstruction of a system within the City, the Grantee shall pay to the City an annual amount equal to five percent (5%) of gross annual revenues as defined in Section 113.01 of this chapter. This includes, but is not limited to, all subscribers' payments, installation fees, converter boxes, local advertising, leased access channels, pay-per-view and cable service exchanged in barter agreements. This amount shall not include any taxes on cable service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency and which are collected by the Grantee on behalf of such governmental unit or agency.

**113.40 QUARTERLY PAYMENTS.** Payment due to the City under this provision shall be made quarterly at the Clerk's office not later than 45 days following March 31, June 30, September 30 and December 31 of each year. Any fee not paid when due shall bear interest at a rate of 1½ percent per month from the date due. Each payment shall be accompanied with a detailed report showing the basis for the computation, specific income categories, and such other relevant facts as may be required by the City. The acceptance of any payment shall not be construed as an accord that the amount paid is, in fact, the correct amount; nor shall such acceptance of payment be construed as a release of any claim the City may have for additional sums payable by the Grantee. All amounts paid shall be subject to audit and recomputation by the City. The Grantee may base the payments for the first three quarters on estimated revenues with a final reconciliation done at the end of the fourth quarter of the calendar year.

**113.41 LIMITATION ON FRANCHISE FEE ACTIONS.** The period of limitation for recovery of any franchise fee payable hereunder shall be ten years from the date on which payment by the Grantee is due.

**113.42 FRANCHISE FEE AUDIT.** The Grantee will fully cooperate with a franchise fee audit performed by a professional firm that is chosen by the City. The costs associated with the audit will be paid for by the City, provided that the Grantee shall pay for the costs if the audit shows an underpayment of franchise fees in excess of five percent (5%) or more. In addition, the City and Grantee will design a mutually agreeable form to be used by the Grantee that reflects a breakout of the items used to calculate the franchise fees paid to the City.

**113.43 FRANCHISE FEE INCREASES.** The City may request an increase in franchise fees at any time during the term of the franchise, equal to the maximum allowed by Federal law. However, such request shall be made in writing and the Grantee will not be liable for said increase until proper notice, as defined by Federal law, is given to its subscriber.

**113.44 RATES AND CHARGES.** The City may regulate rates for the provision of basic cable and equipment as expressly permitted by Section 623 of the Cable Act of 1992, as amended, and applicable law. Any rate adjustments shall be filed with the Clerk not later than 30 days prior to the implementation of the adjustment.

**113.45 RENEWAL OF FRANCHISE.** The City and the Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Grantee's franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of Federal or State law.

**113.46 TRANSFER OF FRANCHISE.** The Grantee's right, title, or interest in the franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with the Grantee, without the prior consent of the City. Such consent shall not be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of the Grantee in the franchise or system in order to secure indebtedness. Within 30 days of receiving the request for transfer, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial, and technical qualifications of the transferee. The entity seeking to obtain the purchase, transfer assignment or control of the cable system shall comply with the requirements outlined for new applications in Section 113.07 of this chapter. In order to protect the interest of the City under any franchise granted pursuant to this chapter and in order that the City may exercise its option to acquire the facilities and property of the system as authorized, the Grantee shall give the Council six months' notice of its intent to make any such an agreement or transfer. Prior approval of the Council shall be required for the sale, transfer, or other disposition of interest in or right of control over the Grantee or its assets whenever such sale, transfer or disposition in itself or in an accumulated total of related transactions changes the interest in or control of the Grantee by five percent (5%) or more. It is a violation of this chapter for any individual or group of individuals acting in concert to formally or informally authorize any other individual or group of individuals to act as their nominee or to mislead the Council in any way in regard to the sale, transfer, or disposition of interest in or control of the Grantee. The restrictions of this section shall be effective immediately upon execution of a franchise agreement.

**113.47 CITY'S RIGHT TO PURCHASE SYSTEM.** The City shall be entitled to a right of first refusal on any bona fide offer to purchase the Cable System made to Grantee. "Bona fide offer" as used in this section means a written offer which has been accepted by Grantee subject to the City's rights under the franchise. The price to be paid by the City shall be the actual price which has been negotiated at arm's length between the parties. The City shall notify Grantee of its intention to purchase within thirty (30) days of the City's receipt from Grantee of a copy of the written bona fide offer. Payment shall be made upon closing in readily available funds within one hundred eighty (180) days of the City's receipt from Grantee of a copy of the written bona fide offer.

**113.48 RIGHT OF INSPECTION OF CONSTRUCTION.** The City shall have the right to inspect all construction or installation work performed subject to the provisions of this permit and to make such inspections as it shall find necessary to ensure compliance with the terms of this permit and other pertinent provision of law.

**113.49 NEW DEVELOPMENTS.** The Grantee is encouraged to upgrade its facilities, equipment, and service so that its system is as advanced as the current state of production technology will allow. Such new developments shall be a topic of discussion at all review sessions and shall be a factor to be considered in connection with requests for rate adjustments.

**113.50 OTHER BUSINESS ACTIVITIES.** Subject to the right of the Council to change this policy, the Grantee shall not engage in the business of selling, repairing, or installing television receivers, excluding converters, in the City during the term of the franchise. Nothing herein shall be deemed to prohibit the Grantee, at a customer's request, from examining and adjusting a customer's receiver set to determine whether reception difficulties originate in the set or in Grantee's system.

**113.51 PRIVATE EASEMENTS.** No cable, line, wire, amplifier, converter, or other piece of equipment owned by the Grantee shall be installed by the Grantee within private easements without first securing the written permission of the owner, lessee, or tenant of any property involved.

**113.52 COMPLIANCE AND MONITORING.**

1. Testing for Compliance. The City may perform technical tests of the system during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the system in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable State or Federal laws. Except in emergency circumstances, such tests may be undertaken only after giving the Grantee reasonable notice thereof, not to be less than two business days, and providing a representative of the Grantee has an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that the Grantee has substantially complied with such material provisions thereof, the cost of such testing shall be borne by the City. The City agrees that such testing shall be undertaken no more than once a year, and that the results thereof shall be made available to the Grantee.

2. Books and Records. The City or its certified public accountant upon reasonable notice to the Grantee may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms hereof. Such records include (but are not limited to) any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature under State and Federal rules of evidence. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide subscriber information in violation of Section 631 of the Cable Act.

3. Communications with Regulatory Agencies. Copies of all petitions, applications, communications, reports, and all other documents submitted by the Grantee or its parent companies to the FCC, Securities Exchange Commission, or any other Federal or State regulatory commission or agency shall be made available to the City upon written request to the Grantee.

4. Subsequent Action by State or Federal Agencies. If the State of Iowa, the FCC or any other agency of the Federal government should subsequently require the Grantee to deliver any signals in addition to those required by this chapter, or to perform or cease to perform any act which is inconsistent with any provisions of this chapter, the Grantee shall so notify the City within 30 days of the publication of such requirement.

5. Complaint Records. The Grantee shall maintain detailed logs setting forth the date and substance of each complaint received by phone, mail or other means during the preceding calendar month, if any, the name and address of each complaining party, and the date and nature of action taken by the Grantee to respond to such complaints, or if still pending, the status thereof. Such logs shall be available to the City for review for two years thereafter.

6. City Role in Complaints. Unresolved complaints concerning the system or its operation or maintenance shall be directed to the Clerk. The Clerk shall forward the complaint to the Grantee or shall take the question up by correspondence with the Grantee. Within such time as may be prescribed by the Clerk, the Grantee shall resolve the complaint or advise the City of its refusal or inability to do so. When the Grantee resolves the complaint, it shall so notify the City.

If a complaint has not been resolved, the complainant may petition the City to take any appropriate action authorized by this chapter.

7. Performance Testing. Grantee shall perform all system tests and maintenance procedures as required by the FCC and this chapter and in accordance with Grantee's standards of good operating practice and the National Cable Television Association's test procedures guidelines.

8. Review Sessions. In recognition of the fact that a great many technical, financial, marketing and legal uncertainties are associated with all aspects of cable communications at the present time, it is the intent of the City to provide for a maximum feasible degree of flexibility in the franchise throughout its term to achieve an advanced and modern system for the City. The principal means for accomplishing this flexibility will be the scheduled review sessions provided for in this chapter. It is intended that such review sessions will serve as a means of cooperatively working out solutions to problems that develop. Furthermore, such review sessions shall be two-way processes. For example, if either party has perceived that some major problem has developed, the session shall be devoted primarily to working every third year thereafter for the duration of the franchise. All such review sessions shall be open to the public and notice thereof shall be published once, not less than four (4) days or more than twenty (20) days before each review session, as provided by law. The published notice shall specify the topics to be discussed. The review sessions may be cancelled by mutual agreement of the City and Grantee. The following topics shall be discussed at every scheduled review session:

- Recent and developing judicial and FCC rulings;
- Service rate structures;
- Free and discounted services;
- Application of new technology or new developments;
- System performance;
- System extension policy;
- Services provided;
- Programming offered;
- Customer complaints review;
- Community development and education;
- Interconnection;
- New services;
- Franchise fees.

Other topics, in addition to those listed, may be added by either party. Members of the general public may also request additional topics. The City may utilize the services of a consultant to gain additional information for use during the review sessions, renewal process and/or rate hearings, mediation, and arbitration sessions. The cost of such consultant shall be paid by the City.

9. Annual Report. No later than ninety (90) days after the close of the Grantee's fiscal year, the Grantee shall submit a detailed written informative report to the City, including the following information pertaining only to the Williamsburg franchise:

- A. A summary of the previous year's activities in development of the system, including, but not limited to, services begun or dropped and subscribers gained or lost.

- B. A detailed revenue statement including a breakdown of all revenue sources upon which the City can verify franchise fee accuracy. The list of revenues shall include but not be limited to, a specific breakdown of the following items: basic tier service charges; expanded basic service charges; installation charges; reconnection fees; advertising revenues; bad debt collections; premium channel revenues; shopping service revenue; revenue from other sources such as contracted or subleased video; audio and data transmission services; pay-per-view; and miscellaneous revenue.
- C. A summary of complaints, identifying the number and specific nature of the complaints and their disposition.
- D. A list of key management for the Williamsburg franchise along with their addresses and job titles.
- E. The annual report of the parent company if a public corporation.
- F. A summary of types of communications signals and services provided without charge or provided under a barter agreement along with their dollar equivalent.

### **113.53 INSURANCE AND INDEMNIFICATION.**

1. Indemnification. The Grantee shall defend, indemnify, protect and hold harmless the City from and against any and all liability, losses and damage to property or bodily injury or death to any person, including payments made under worker's compensation laws, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance or operation of Grantee's cable television system and caused by any act or failure to act on the part of the Grantee, its agents, officers, servants or employees.

2. Insurance. The Grantee shall maintain insurance in such amounts and kinds of coverages as may be specified by the City. Such coverages may be adjusted by the City with 90-day notification. The Grantee shall maintain such insurance with insurance underwriters authorized to do business in the State of Iowa and who are acceptable to the City. All policies shall name the City, its employees, servants, agents, and officers as additional named insured parties. Certified copies of the insurance policies required by this section shall be filed annually with the Clerk. Each policy shall provide that it may not be canceled or the amount of coverage altered until thirty (30) days after receipt by the Clerk of a registered mail notice of such intent to cancel or alter coverage. The Grantee shall maintain and provide to the Clerk proof of Public Liability Insurance for not less than the following amounts:

\$1,000,000 – Any one occurrence, Bodily Injury or Property Damage

\$1,000,000 – Personal or Advertising Injury Liability, any 1 person or organization

\$2,000,000 – Products/Completed Operations Annual Aggregate Liability

\$2,000,000 - General Aggregate

To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits, and amounts of the insurance provided for herein are subject to reasonable increases at the end of every three-year period of the franchise, applicable to the next three-year period, upon a demonstration by the City of the increased insurance risks requiring such changed limits.

3. Insurance for Contractors and Subcontractors. Grantee shall provide coverage for any contractor or subcontractor involved in the construction, installation, maintenance or operation of its cable communications system by either obtaining the necessary endorsements to its insurance policies or requiring such contractor or subcontractor to obtain appropriate insurance coverage

consistent with this section and appropriate to the extent of its involvement in the construction, installation, maintenance or operation of Grantee's cable communication system.

4. Foreclosure. A foreclosure or other judicial sale of all or part of the system shall be treated as a change in control of the Grantee and the provisions of Section 113.55 of this chapter shall apply.

5. Receivership. The City shall have the right to cancel the franchise 120 days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy or other action or proceedings, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless, within 120 days after being elected or appointed:

A. Such receiver or trustee shall have fully complied with all provisions of this chapter and remedied all defaults thereunder; and

B. Shall have executed an agreement, approved by the court having jurisdiction, whereby such receiver or trustee agrees to be bound by this chapter and the franchise granted to the Grantee.

6. Publication of Notice. Whenever the provisions of this chapter require that notice be published, such notice shall be prepared and published by the City. The cost of publication will be borne by the Grantee.

7. Cost of Publication. The Grantee shall assume the costs of publication of this chapter, the costs of any other legal publication for amendments to this chapter prior to franchise award, the costs of publication of any other ordinances or legal documents prior to franchise award, and the costs of the special election. The Grantee seeking renewal shall assume the costs of publishing the chapter.

8. Taxes. Subject to Federal and State law, the Grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees, and other charges of a like nature which may be taxes, charged, assessed, levied or imposed upon the property of the Grantee and upon any services rendered by the Grantee.

#### **113.54 ENFORCEMENT OF FRANCHISE.**

1. Notice of Violation. In the event that the City believes that the Grantee has not complied with the terms of the franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

2. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice: (i) to respond to the City contesting the assertion of noncompliance; or (ii) to cure such default; or (iii) in the event that, by the nature of the default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

3. Public Hearing. In the event that the Grantee fails to respond to the notice as described herein or in the event that the alleged default is not remedied within thirty (30) days after the date projected pursuant to subparagraph iii in subsection 2 above, the City shall schedule a public meeting to investigate the default. The City shall notify the Grantee in writing of the time and place of such meeting no less than five business days in advance and provide the Grantee with an opportunity to be heard.

4. Enforcement. In the event the City, after such public hearing, determines that the Grantee is in default of any provision of the franchise, the City, subject to applicable Federal law, may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy as an alternative to damages;
- B. Commence an action at law for monetary damages or seek other equitable relief;
- C. In the case of a substantial default of a material provision of the franchise, declare the franchise agreement to be revoked.

The City shall give written notice to the Grantee of its intent to revoke the franchise on the basis of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have 30 days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response satisfactory from the Grantee, it may then seek termination of the franchise at a public meeting. The City shall cause to be served upon the Grantee, at least five days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination. At the designated meeting, the City shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City *de novo* and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within 60 days of the issuance of the determination of the City. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under the franchise in lieu of revocation of the franchise.

5. Closing of Streets. The Grantee shall not be entitled to damages from the City sustained by the virtue of the closing, vacation, or relocation of any streets or alleys.

6. Reservation of Rights. The Grantee shall not be relieved of its obligation to comply with this chapter by reason of the City's failure to enforce prompt compliance.

7. Impossibility of Performance. The Grantee shall not be held in default or noncompliance with the provisions of the franchise, or suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by the following circumstances if reasonably beyond its control:

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

8. Reduced Rate Structure for Noncompliance. If after notice and opportunity for hearing, the Council determines that the Grantee is not in complete compliance with all the provisions of the cable franchise regulatory ordinance and the cable franchise agreement ordinance, the Grantee shall reduce the rate for the basic tier of cable service by twenty-five percent (25%) until such time that the Council has been satisfied that the Grantee is in compliance with all the provisions of such ordinances.

## **113.55 TERMINATION OF FRANCHISE.**

1. Grounds for Revocation. The City reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:
  - A. If the Grantee should default in the performance of any of its obligations under this chapter or the franchise, and fails to cure the default subject to the provisions of this section;
  - B. If the Grantee should fail to provide or maintain in full force and effect the performance bond and liability and indemnification coverages as required herein;
  - C. If a petition is filed by or against the Grantee under the Bankruptcy Act or any other insolvency or creditors' rights law (State or Federal), and the Grantee fails to have it dismissed;
  - D. If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of its assets, subject to the provisions of Section 113.53(5).
  - E. If the Grantee makes an assignment for the benefit of creditors.
  - F. If any court of competent jurisdiction, the FCC or any State regulatory body, by rules, decision, or other action, determines that any material provisions of the franchise documents, including this chapter, are invalid or unenforceable.
  - G. If the Grantee should violate any orders or ruling of any regulatory body having jurisdiction over the Grantee, unless the Grantee is lawfully contesting the legality or applicability of such order or ruling.
2. Purchase of System by City. If the City determines not to renew the franchise for just cause and for reasons other than a material breach of the franchise or reasons unrelated to the performance of the franchise holder or upon receipt of an application for assignment of the franchise, or upon change of de facto control, the Grantee shall first offer the cable television system for sale to the City at a fair and just market value, which value shall include the fair market value of the system as a going concern including the franchise itself and the rights and privileges granted by the City. When a franchise is revoked pursuant to this chapter or expires and is not renewed because of a material breach of the franchise, the Grantee shall first offer the cable television system for sale to the City at a fair and just market value, which value shall not include any value for the franchise itself or for any of the rights and privileges granted by the City. In the event the determination of fair market value cannot be negotiated or determined, said value shall be determined by an impartial arbitration procedure pursuant to State law, wherein the Grantee and the City shall each choose an arbitrator and the arbitrators chosen shall choose the third, and the valuation determined by said arbitrators shall be considered the fair market value at which the system will be offered to the City. The determination of the value of the system shall be decreased by the amount of any damages sustained by the City in connection with revocation or expiration, including without limitation, payment made by the City to another person or entity to operate the cable television system for a temporary period after revocation. The cost of the arbitration procedures shall be shared equally by the City and the Grantee. The City shall have ninety (90) days to exercise the right of first refusal to purchase the system; said 90 days commencing on the day the fair market value of the system is determined either through negotiation or the arbitration procedure. If the City does not exercise its option to purchase, and the system is not sold to another operator who has obtained a franchise from the City in a reasonable period of time, the Grantee, upon request by the City, shall promptly remove all its plant, structures, and equipment. However, in the event the City determines not to exercise its right of first refusal, it shall not unreasonably refuse to renew or grant a cable television franchise

during a reasonable interim period. While transfer of the system and franchise is being negotiated, arranged, or ordered, the Grantee may be required to continue service to the public, unless for reasons beyond the control of the Grantee, said operation will be economically unfeasible to the Grantee.

3. Restoration of Property. In removing its plant, structures and equipment, the Grantee shall refill at its own expense any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances, without affecting the electric or telephone cables, wires, or attachments. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance indemnity provided in Section 113.53 and the performance bond in Section 113.57 shall continue in full force and effect during the period of removal.

4. Restoration by City; Reimbursement of Costs. In the event of a failure by the Grantee to complete any work as required above or any work required by City law or ordinance within the time established and to the satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the costs thereof within thirty (30) days after receipt of an itemized list of such costs or the City may recover such costs as provided in Section 113.56.

#### **113.56 SECURITY FUND.**

1. Within ten (10) days after execution of the franchise agreement, the Grantee shall deposit with the Clerk, and maintain on deposit through the term of the franchise, the sum of \$10,000.00 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 the franchise agreement and the payment by the Grantee of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system.

2. Within ten (10) days after notice that any amount has been withdrawn from the security fund deposited pursuant to subsection 1, the Grantee shall pay to or deposit with the Clerk a sum of money sufficient to restore such security fund to the original amount of \$10,000.00.

3. If the Grantee fails to pay to the City any compensation within the time fixed herein or fails after ten days' notice to pay to the City any taxes due and unpaid; or fails to repay to the City within such ten days any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this franchise, or fails after three (3) days' notice of such failure by the Council to comply with any provision of this chapter which the Council reasonably determines can be remedied by an expenditure of the security, the Clerk may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the Clerk shall notify the Grantee of the amount and date thereof.

4. The security fund deposited pursuant to this section shall become the property of the City in the event that the franchise is canceled by reason of the default of the Grantee. The Grantee, however, shall be entitled to the return of such security fund or portion thereof as remains on deposit at the expiration of the term of the franchise provided that there is then no outstanding default on the part of the Grantee. Interest earned by the investment of the security fund will accrue to the Grantee.

5. The rights reserved to the City with respect to the security fund are in addition to all 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 such security fund shall affect any other right the City may have.

**113.57 FAITHFUL PERFORMANCE BOND.** Upon acceptance of the franchise, the Grantee shall submit and maintain throughout the term of the franchise, a faithful performance bond in the amount of \$1,000,000.00. The bond shall insure compliance with all applicable laws, regulations, ordinances, and provisions of this chapter, shall provide for recoverable loss or damages, compensation, indemnification, reasonable attorney fees, cost of removal or abandonment of Grantee's property, and shall cover penalties of \$500.00 per day for failure to meet the construction requirements of any franchise agreement.

**113.58 VIOLATIONS AND PENALTIES.** If the Grantee fails to comply with the requirements of this chapter, then the City may invoke and secure compliance in accordance with Section 1.14 of this Code of Ordinances and as authorized by Section 364.22 of the *Code of Iowa*.

**113.59 ACTIONS OF PARTIES.** In any action by the City or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**113.60 EQUAL PROTECTION.** In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than the Grantee to enter into the City's streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

**113.61 NOTICE.** Unless expressly otherwise agreed between the parties, every notice or response required by this chapter to be served upon the City or the Grantee shall be in writing and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid.