

CHAPTER 113

CABLE TELEVISION REGULATIONS

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

1. “Cable television system” means any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals, by wire or cable, to subscribing members of the public who pay for such services.
2. “Channel” means the segment of the electromagnetic spectrum to which a source of television transmission is assigned.
3. “FCC” means the Federal Communications Commission.
4. “Franchise” means the rights, privileges, and authority granted by the City to the Grantee hereunder and includes all of the terms and conditions of this chapter.
5. “Grantee” means any company granted a cable television franchise in the City, its successors and assigns. When the context so requires, the term

“Grantee” means and includes the Grantee, its officers, agents, employees, servants and independent contractors.

6. “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.

7. “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.

8. “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.

113.02 BOND. A Grantee shall, concurrently with its acceptance of a franchise, file with the Clerk and at all times thereafter, maintain in full force and effect for the term of the franchise or any renewal thereof, at Grantee’s sole expense, a corporate surety bond in a responsible company licensed to do business in Iowa, in the amount of \$10,000.00, renewable annually, and conditioned upon the faithful performance of the Grantee and compliance by the Grantee with all provisions of this chapter and upon further condition that in the event Grantee fails to comply with any one or more of the provisions of this chapter, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for Attorney’s fees and costs, up to the full amount of the bond, said condition to be a continuing obligation for the duration of the franchise and any renewal thereof and thereafter until the Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of the franchise or renewal by the Grantee or from its exercise of any privilege or right granted. The bond shall provide that at least 30 days’ prior written notice of intention not to renew, cancellation or material change be given to the City by filing the same with the Clerk. Notwithstanding the above provisions, the Council may in its sole discretion, waive said bond or reduce the required amount thereof after three (3) years of operation of the cable television system under a franchise by the Grantee, which the Council has found to be satisfactory.

113.03 USE OF PROPERTY. The Grantee may use public property within the City and, with the written consent of the owner thereof, private property within the City, in furtherance of such activities within the City as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system subject, however, to the following restrictions:

1. Laws and Regulations. The Grantee shall comply with all governmental laws, ordinances, rules or regulations as may now or hereafter be applicable thereto.
2. Restrictions. The Grantee shall not use or occupy or permit public property or private property to be used or occupied or do or permit anything to be done on or about public property or private property which will, in any manner:
 - A. Impair the owner's interest in or title thereto;
 - B. Impair any mortgage or lease as may now or hereinafter be applicable thereto;
 - C. Adversely affect the then value or character thereof;
 - D. Cause or be likely to cause structural damage thereto, or any part thereof;
 - E. Cause or be likely to cause any damage or injury to any utility service available thereto;
 - F. Create a public or private nuisance, cause any offensive or obnoxious vibrations, noise, odor or undesirable effect or interfere with the safety, comfort or convenience of the owner thereof, and persons lawfully on or about the same;
 - G. Violate the rules, regulations and requirements of any person furnishing utilities or services thereto; or
 - H. Make void or voidable any insurance then in force affecting the same or cause an increase in the rates applicable thereto.

113.04 TAXES. 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 taxed, charged, assessed, levied, or imposed upon the property of the Grantee and upon any services rendered by the Grantee.

113.05 INSURANCE. The Grantee shall, at all times during the term of the franchise, carry and require their contractors to carry:

1. General Liability. Insurance in such forms and in such companies as shall be approved by the City to protect the City and Grantee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of any structure, equipment or appliance. The amount of such insurance shall be not less than \$100,000 as to any one person, \$300,000 as to any one

occurrence for injury or death to persons, and \$100,000 for damages to property, with so-called umbrella coverage of at least \$1,000,000.

2. Worker's Compensation. Worker's Compensation Insurance as provided by the laws of the State of Iowa, as amended.

3. Automobile. Automobile Insurance with limits of not less than \$100,000/\$300,000 of public liability coverage and automobile property damage insurance with a limit of not less than \$100,000 covering all automotive equipment, with so-called umbrella coverage of at least \$1,000,000.

All of said insurance coverage shall provide a ten (10) day notice to the City in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective. Copies of all insurance policies required hereunder shall be furnished to and filed with the City prior to the commencement of operations or the expiration of prior policies, as the case may be. The Grantee shall pay all reasonable expenses incurred by the City in defending itself with regard to all damages, penalties or other claims resulting from the acts of the Grantee, its assigns, employees, agents, invitees, or other persons. Said expenses shall include all out-of-pocket expenses such as attorney's fees, and shall include the value of any service rendered by the City Attorney or any other officers or employees of the City.

113.06 REPAIRS. During the term of the franchise, the Grantee shall, at its own expense, make all necessary repairs and replacements to the property of the Grantee. Such repairs and replacements, interior and exterior, ordinary as well as extraordinary, and structural as well as nonstructural, shall be made promptly, as and when needed.

113.07 HOLD HARMLESS. During the term of the franchise, the Grantee absolutely assumes and agrees to pay the City for, and the Grantee forever agrees to indemnify the City against, and agrees to hold and save the City harmless from, any and all damage, injury, costs, expenses, liability, claims, settlements, judgments, decrees and awards of every kind and nature whatsoever, including attorney's fees, costs and disbursements, that may ever be claimed against the City by any person whatsoever, or on account of any actual or alleged loss, damage or injury to any property or person whatsoever, however arising from or related to or connected with, directly or indirectly, (a) injury to or death of any person, or loss, damage or injury to any property of the Grantee, and/or (b) the nonobservance by the Grantee of the provisions of any laws, statutes, ordinances, resolutions, regulations or rules duly promulgated by any governmental entity which may be applicable directly or indirectly, to rights, privileges, and authority, and the obligations and liabilities, assumed by the Grantee under the franchise, (c) the nonobservance by the Grantee

of any of the terms and conditions of the franchise, and/or (d) the granting of the franchise.

113.08 CHANGE OF STRUCTURE OR OWNERSHIP. The Grantee shall not change its corporate structure or change the ownership of its capital stock outstanding on the effective date of the franchise to the extent of twenty-five percent (25%) or more without the written consent of the City.

113.09 INSOLVENCY OF GRANTEE. In the event that the Grantee shall become insolvent, or be declared a bankrupt, or the property of the Grantee shall come into the possession of any receiver, assignee or other officer acting under an order of court, and any such receiver, assignee or other such officer shall not be discharged within sixty (60) days after taking possession of such property, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee.

113.10 DEFAULT OF GRANTEE. In the event the Grantee shall fail to comply with any of the terms and conditions of the franchise within thirty (30) days after receipt of notice in writing from the City specifying the failure or default, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee. This section shall not apply to failures or defaults beyond the reasonable control of the Grantee.

113.11 TERMINATION. Upon termination of the franchise for any cause, the Grantee shall remove the property of the Grantee from all public property and private property within the City and shall return such public property and private property to the owner thereof in the same condition as when the property of the Grantee was placed thereon, ordinary wear and tear excepted.

113.12 COMPLIANCE WITH APPLICABLE LAWS. During the term of the franchise, the Grantee shall comply with all governmental laws, ordinances, rules or regulations as may be applicable to the construction, operation, maintenance, repair, replacement, renewal, reconstruction, and removal of a cable television system, the sale and supply of audio and video communications services, the use of public property and private property and the engagement in such further activities as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system. Any modification to Section 76.31 of Subpart C of the regulations of the FCC applicable to the cable television system shall be incorporated into the franchise by amendment to this chapter within one (1) year after the effective date of such modification, or at the time of renewal of the franchise, whichever occurs first.

113.13 CERTIFICATE OF COMPLIANCE. Within ninety (90) days after the effective date of the franchise, the Grantee shall make application to the FCC for a Certificate of Compliance.

113.14 CONSTRUCTION AND OPERATION SCHEDULE. Within one year of the grant of a Certificate of Compliance by the FCC, the Grantee shall complete significant construction of its basic trunk line; within one year thereafter, if not sooner, the Grantee shall extend energized trunk cable to at least 90% of the potential subscriber terminals in the City; within three (3) years thereafter, Grantee shall extend energized trunk cable to the remainder of the City area. Within two (2) years after receiving FCC certification, the Grantee shall complete its studios and cablecasting facilities within the City and the same shall be fully operational.

113.15 INSTALLATION AND MAINTENANCE OF PROPERTY OF THE GRANTEE. During the term of the franchise, the property of the Grantee shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed, and removed in accordance with generally accepted engineering principles so as not to endanger or interfere with the lives of persons or to interfere with improvements which the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

113.16 INTERFERENCE. The Grantee's cable television system shall be so designed, engineered and maintained so as not to interfere with the radio and television reception of persons who are not subscribers of the Grantee.

113.17 INSTALLATION OF CABLES. The Grantee shall have the right, privilege, and authority to lease, rent or in any other manner obtain the use of wooden poles with overhead lines, conduits, trenches, ducts, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises with the City, and to use such poles, conduits, trenches, ducts, lines, and cables in the course of its business. The Grantee shall install its cable on the existing poles owned by other holders of public licenses and franchises with the City whenever possible for the installation of its cable. When installation of cable on poles is insufficient, or when holders of other public licenses or franchises have installed underground cable, then in that event, the cable used by the Grantee shall be installed underground.

113.18 CITY USE OF EXISTING POLES. The City shall and does hereby retain the right to utilize the existing poles for future City use, and to require the removal of the cable by the Grantee where existing poles are not sufficient to adequately handle the proposed City use and the Grantee's cable.

113.19 PRIOR APPROVAL OF UNDERGROUND INSTALLATIONS. The Grantee shall submit detailed drawings of all proposed underground cable

installations to the City for approval prior to the commencement of construction and shall not deviate therefrom without approval of the City.

113.20 RESTORATION OF GROUND SURFACE. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, or surface of any street or alley disturbed, in as good a condition as before said work was commenced.

113.21 ALTERATION OF GRADE. In the event that during the term of the franchise, the City shall elect to alter or change the grade of any street, alley, or public way, the Grantee, 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.

113.22 TEMPORARY REMOVAL OF CABLES. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its cables to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of cables shall be paid by the person requesting the same and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five (5) days' advance notice to arrange for such temporary cable changes.

113.23 TREE TRIMMING. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the cables of the Grantee. All trimming shall be done at the expense of the Grantee.

113.24 SERVICE REQUIREMENTS. During the term of the franchise, the Grantee shall furnish reasonable, adequate and efficient cable television service to subscriber terminals. This requirement may be temporarily suspended due to circumstances beyond the reasonable control of the Grantee.

113.25 PERFORMANCE STANDARDS. The Grantee shall produce a picture in black and white or in color that is of high quality accompanied by proper sound on typical standard television sets in good repair. The Grantee shall also transmit signals of adequate strength to produce good pictures with good sound at all subscriber terminals throughout the City without causing cross modulation in the cables or interfering with other electrical or electronic systems.

113.26 CHANNEL CAPACITY AND PERFORMANCE. During the term of the franchise, the cable television system of the Grantee shall conform to the channel

capacity and performance requirements contained in the then current regulations of the FCC.

113.27 INSTALLATION AND MAINTENANCE OF SUBSCRIBER TERMINALS IN CITY BUILDINGS AND SCHOOLS. During the franchise, the Grantee shall at its sole cost, install and maintain a subscriber terminal in such buildings owned or used by the City, and in such buildings owned or used by recognized educational authorities within the City, both public and private, as may be designated by the governing body having jurisdiction thereof. If service to more than one television receiver in a school building is requested by the recognized educational authorities, the cost of the installation (defined as “Grantee’s actual cost of labor and materials”) will be borne by the school district.

113.28 USE OF EDUCATIONAL AND LOCAL GOVERNMENT ACCESS CHANNELS. During the term of the franchise, the Grantee shall, at its sole cost, make available to the City and recognized educational authorities within the City, both public and private, at reasonable times and on reasonable notice, the use of its studio, other production facilities and related equipment for origination cablecasting. In addition thereto, the Grantee shall provide, at its sole cost, such technical assistance as may be reasonably necessary to produce such origination cablecasting.

113.29 TELEVISION BROADCAST SIGNALS. Grantee shall provide as part of its cable television service the signals of all television broadcast signals presently available off-the-air in the City and the maximum number of additional television signals consistent with the rules and regulations of the FCC and all other applicable laws, rules or regulations. Grantee may provide such automated video services and such audio services as it wishes and as are consistent with the terms of this chapter. Grantee’s cable television system will be so designated, engineered and maintained by the Grantee so as not to interfere with the television and radio reception of residents of the City who are not subscribers to its service.

113.30 LOCAL PROGRAMMING. Grantee shall provide cablecasting in such a manner and in such amount and shall maintain such studio facilities and equipment as may be required by the regulations of the FCC.

113.31 AUTOMATED SERVICES. Grantee may make available such automated video services and such audio services as it wishes.

113.32 USE OF STUDIO AND OTHER PRODUCTION FACILITIES. Grantee shall allow the City and recognized educational authorities located in the City, both public and private, to use its studio and other production facilities, equipment and materials, on reasonable notice, at reasonable times and at a reasonable charge, if any, but in no event shall such charge exceed actual Grantee’s

costs. Grantee shall provide at no charge such technical assistance as may be reasonably required in the production of instructional, educational and civic programs.

113.33 TELECAST OF EDUCATIONAL ACTIVITIES. The Grantee shall not cablecast, tape, reproduce or otherwise convey to its subscribers the activities of any recognized educational authority, public or private, without the written consent of the governing body of such authority.

113.34 PROGRAM ALTERATION. Any signal received by the Grantee from a television broadcast station shall be cablecast by the Grantee in its entirety, as received, without alteration.

113.35 FMBANDS. Uses of the FM bands for other than delivery of radio station signals may be applied by the Grantee only after approval has been granted by the Council, subject to FCC approval. The system should stay abreast of the state of the art as regards equipment, channel and systems capacity.

113.36 SUBSCRIBER RATES AND CHARGES. All rates for service shall be reasonable, compensatory and nondiscriminatory. Except as otherwise provided in the franchise, the Grantee shall have the right, privilege and authority to change the rates and charges.

113.37 SERVICE RULES AND REGULATIONS. The Grantee shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. Such rules and regulations shall be consistent with the terms and conditions of the franchise. The Grantee shall file such rules and regulations, and all amendments thereto, with the City.

113.38 SERVICE AGREEMENTS. The Grantee shall have the right to prescribe a reasonable form of service agreement for use between the Grantee and its subscribers. Such service agreement shall be consistent with the terms and conditions of the franchise. The Grantee shall submit its proposed form of service agreement and all proposed amendments thereto to the City for approval.

113.39 OFFICE OF THE GRANTEE. Grantee shall establish and maintain within the City a local business office, which office shall be open for business between the hours of eight o'clock (8:00) a.m. and five o'clock (5:00) p.m., Monday through Friday, except on holidays, and said office shall be appropriately staffed to receive and answer all subscriber complaints. Grantee shall make a monthly report to the City of all consumer complaints, and the action taken to remedy the complaints. This report shall state the names and addresses of the complainants, the

date the complaint was received and the nature of the complaint and the specific action taken to remedy each complaint.

113.40 PROCEDURE TO HANDLE COMPLAINTS AND GRIEVANCES.

The procedure to handle complaints and grievances with respect to the quality of the services rendered by the Grantee, equipment malfunctions and other similar matters pertaining to the cable television system of the Grantee are as follows:

1. Within thirty (30) days after the occurrence of the facts and circumstances giving rise to a complaint or grievance, and not thereafter, the complainant shall state his or her complaint or grievance to the Grantee in writing. In the event that a complaint or grievance is received by the City, the City shall forward such complaint or grievance to the Grantee in writing.
2. Within five (5) days after the receipt of a complaint or grievance by the Grantee, the Grantee shall state to the complainant its intentions with respect to the complaint or grievance in writing.
3. In the event that the complaint or grievance is not resolved to the satisfaction of the complainant within fifteen (15) days after the receipt thereof by the Grantee, the complaint or grievance shall be settled by arbitration. Such arbitration shall be before three (3) disinterested arbitrators, one named by the complainant, one named by the Grantee, and one named by the two thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State.

113.41 INJURY TO PROPERTY OF THE GRANTEE. No person shall wrongfully or unlawfully injure the property of the Grantee.

113.42 INTERCEPTING SIGNALS OF THE GRANTEE. No person shall wrongfully or unlawfully intercept the signals of the Grantee.

113.43 FILING OF REPORTS. On or before April 1 of each year, the Grantee shall file with the City copies of FCC Form 325 and FCC Form 326 for the preceding calendar year.

113.44 FILING OF AUDIT. On or before April 1 of each year, the Grantee shall file with the City an audit of its gross subscriber receipts within the City during the preceding calendar year. This audit shall be made by a Certified Public Accountant.

113.45 FILING OF MAPS AND PLATS. On or before April 1 of each year, the Grantee shall file with the City maps and plats showing the location and nature of all new property of the Grantee within the City as of the end of the preceding calendar year.

113.46 FILING OF COMMUNICATIONS WITH REGULATORY AGENCIES. The Grantee shall file with the City, copies of all petitions, applications and communications submitted by the Grantee to any regulatory agency having jurisdiction over the Grantee.

113.47 ACCESS. The Grantee shall and does hereby grant to the City the right to enter upon the property of the Grantee, upon reasonable notice, at any and all reasonable times to inspect the same for purposes pertaining to the rights of the City.

113.48 DISCRIMINATION PROHIBITED. The Grantee shall not grant any undue preference of advantage to any person, nor subject any person to prejudice or disadvantage with respect to rates, charges, services, service facilities, rules, regulations, or in any other respect.

113.49 OTHER BUSINESS ACTIVITIES PROHIBITED. During the initial term of the franchise, or any extension thereof, the Grantee shall not engage in the business of selling, leasing, renting or servicing television or radio receivers, or their parts and accessories, and the Grantee shall not require or attempt to direct its subscribers to deal with any particular person or firm with respect to said activities.

113.50 DEFENSE OF GRANTEE. In the event that the Grantee should set up against the City any claim that any term or condition of the franchise is unreasonable, arbitrary, illegal or void, or that the City did not have the power or authority to make such term or condition, the City may, at its option, terminate the franchise in the manner herein provided.

113.51 ARBITRATION. Except as otherwise provided herein, any controversy between the City and the Grantee regarding the rights, duties and liabilities of either party under the franchise shall be settled by arbitration. Such arbitration shall be before three (3) disinterested arbitrators, one named by the City, one named by the Grantee, and one named by the two thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State.