

CHAPTER 114

CABLE FRANCHISE REGULATIONS

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114.01 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. “Basic cable” means the lowest priced tier of service, excluding any lifeline offering, that includes the retransmission of local broadcast television signals and any public, educational, and governmental access channels.
2. “Cable Act” means collectively the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.
3. “Cable operator” means the same as defined in the Cable Act.
4. “Cable service” means the same as defined in the Cable Act.
5. “Cable system” means the same as defined in the Cable Act.
6. “City” means the City of Jefferson and the geographical area within the corporate boundaries of the City.
7. “FCC” means the Federal Communications Commission or successor governmental entity thereto.
8. “Franchise” means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the cable system.
9. “Franchising Authority” or “Grantor” means the City Council of the City of Jefferson or the lawful successor, transferee, or assignee thereof.
10. “Grantee” means any person, firm, corporation, or other entity granted a franchise hereunder, or the lawful successor, transferee, or assignee thereof.

11. "Gross revenues" means any and all revenue received by the Grantee from the operation of the cable system to provide cable service to subscribers in the service area, provided, however, that such phrase shall not include any fees or franchise 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.
12. "Headend" means the land, electronic processing equipment, antennas, tower, building, and other appurtenances normally associated with and located at the starting point of a cable system.
13. "House drop" or "drop" means a cable that connects each building or home to the nearest feeder line of the cable network.
14. "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", as a minimum, shall mean those hours when the Jefferson City Hall is open to serve citizens.
15. "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, strikes, 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.
16. "Outlet" means the point of connection of the cable or wire to a television.
17. "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.
18. "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.
19. "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.
20. "Public access channel" means channel capacity designated for non-commercial public access use.
21. "Public property" means all property, real, personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

22. “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 Franchising Authority in the service area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the system. Public way shall also mean any easement now or hereafter held by the Franchising Authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's cable 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 cable system.

23. “Service area” means the present municipal boundaries of the Franchising Authority.

24. “Service interruption” means the loss of video or audio on one or more channels.

25. “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.

26. “Shall” and “will” means mandatory, “may” means permissive.

27. “Subscriber” means a person or user of the system who lawfully receives communications and other services there from with the Grantee's express permission.

114.02 FRANCHISE REQUIRED. Subject to federal and state law, no person, firm, company, corporation or association shall construct, install, maintain or operate within any public street in the City, or within any other public property of the City, any equipment or facilities for the distribution of television signals over a cable system to any subscriber, unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

114.03 PURPOSE. The purpose of this chapter is to specify requirements for the establishment, construction, operation, and maintenance of a cable system in the City pursuant to Chapter 364, Code of Iowa and applicable federal law. If a

new applicant submits a proposal acceptable to the Grantor, meets the requirements of this chapter, the requirements of the FCC, and applicable state law the Grantor may then proceed to enter into a non-exclusive 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 as amended, and meets the requirements of the FCC, the City shall proceed to fulfill its obligations under Section 626 of the Telecommunications Act of 1996.

114.04 LENGTH OF FRANCHISE. The term of a franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall be determined by the Grantor in the franchise agreement.

114.05 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 qualified person at any time.
2. Privileges Must Be Specified. No privilege of exemption shall be inferred from the granting of any franchise, unless it is specifically prescribed.
3. Authority Granted. Any franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under streets and public ways, as defined herein, which have been or may hereafter be dedicated and open to public use in the City, towers, antennas, poles, cables, electronic equipment, and other network appurtenances necessary for the operation of a cable system in the City, subject to the requirements of this chapter.
4. Subject to Other Regulatory Agencies Rules and Regulations. The Grantee shall at all times during the life of any franchise granted hereunder be subject to all generally applicable ordinances promulgated pursuant to the lawful exercise of the police power by the Grantor.
5. Pole Use Agreements Required. Any franchise granted hereunder shall not relieve the Grantee of any obligation involved in obtaining pole or conduit use agreements from the gas, electric and the telephone companies or others maintaining poles or conduits in the streets of the City.
6. Ordinance Revisions. Any franchises granted under this chapter are made subject to the lawful revisions of the ordinance codified in this chapter and the City Code of Ordinances, provided that such revisions do not materially alter or impair the rights or the obligations of Grantee set forth in any franchise agreement and are mutually agreed to by the Grantor and Grantees.

114.06 RIGHTS RESERVED TO THE GRANTOR.

1. Right of Amendment Reserved to Grantor. The Grantor may from time to time add to, modify or delete provisions of this chapter as it shall deem necessary in the exercise of its lawful police powers and as may be mutually agreed to by the Grantor and 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 any right of the Grantor pursuant to Iowa law.
3. Grantee Agrees to City's Rights. The Grantor reserves every right and power which is required to be reserved or provided by an ordinance of the Grantor, and the Grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the Grantor in its exercise of such rights or powers which have been or will be enacted or established subject to the provisions of subsection 1 above.
4. Police Powers of the Grantor. Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver of any lawful governmental right or power of the Grantor.
5. Grantor Transfer of Functions. Any administrative right or power in or administrative duty imposed upon any elected official of the City shall be subject to transfer by the Grantor to any other elected official, officer, employee, department or board.
6. Grantor Right of Inspection. The Grantor reserves the right, during the life of any franchise granted hereunder, to inspect and oversee all construction or installation work performed in the public right-of-way.
7. Grantor Right of Network Installation. The Grantor reserves the right during the life of any franchise granted hereunder to install and maintain for a reasonable charge upon or in the poles and conduits of the Grantee and pole fixtures necessary for municipal networks on the condition that such installation and maintenance thereof does not interfere with the operation of the Grantee. The Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement or other authorization relating to the service area and such use shall be non-commercial and may not be supplied for any municipal use directly competing with the Grantee.

114.07 APPLICATION FOR FRANCHISE. No initial franchise may be granted unless the applicant has successfully completed the application procedure in accordance with the following filing instructions promulgated by the Grantor:

1. Filing Fee. Payment of a non refundable filing fee to the Grantor of one hundred dollars (\$100.00) which sum shall be due and payable at the time with 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 of Applicant. 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 the chapter, management and marketing staff policies 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. Inter-Company Relationships. A statement describing all inter-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 (5) year operations pro forma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. Costs and revenues anticipated for voluntary services 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, addressed to both applicants' financial ability and planned operation 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, (i.e. 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 cable systems were constructed and the present state(s) of the cable 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 Grantor reserves the right to require such supplementary, additional or other information that the Grantor deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the Grantor.

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

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

114.08 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.

1. Franchise Acceptance, Procedures. Any initial franchise awarded hereunder or franchise renewal 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 Grantor 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 114.13 (2).

C. Reimbursement to the Grantor for the costs of publication of the franchise ordinance and the holding of the election connected therewith, if required by law.

2. Grantee To Have No Recourse. In accordance with Section 635A of the Cable Act, the Grantee shall have no monetary recourse whatsoever against the Grantor for any loss, cost, expense, or damage arising out of any provision or requirement of this chapter or its regulation. This shall not include negligent acts of the Grantor, its agents or employees which are performed outside the regulatory or franchise awarding authority hereunder.

3. Acceptance of Power and Authority of Grantor. 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 Grantor 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 the franchise by any understanding or promise or other statement, whether verbal or written, by or in behalf of the Grantor concerning any term or condition of the franchise that is not included in the ordinance and franchise agreement.

5. Grantee Accepts Terms of Franchise. The Grantee acknowledges by the acceptance of the franchise and the terms herein 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 or arbitrary.

114.09 STANDARDS OF SERVICE.

1. 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 located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

2. Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the cable system there occurs a disturbance of any public way by the Grantee, it shall, at its 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.

3. Relocation at Request of the Franchising Authority. Upon its receipt of reasonable advance notice, not to be less than ten (10) 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 Franchising Authority 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 Franchising Authority; 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 Franchising Authority shall

provide notice to the Grantee of the Grantor's application for such funds and shall allow the Grantee to apply on its own behalf for such funds.

4. Safety Requirements. Construction, installation, and maintenance of the system shall be performed in an orderly and worker like 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 cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

5. Underground and Overground Installation Requirements.

A. 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 Grantor'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.

B. 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 Grantor permit(s) or copy thereof, for scheduled work, obtained in advance from the appropriate department of the Grantor.

C. Rent of Grantee's Poles. A 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 Grantor for its attachment to the Grantee's poles and such use shall be non-commercial and may not be supplied for any municipal use directly competing with the Grantee. The Grantor shall pay any costs incurred by a Grantee in providing space for a Grantor's attachments, including any necessary rearrangements of a Grantee's equipment and plant to provide room

for Grantor's attachments. Upon expiration, termination, or revocation of a franchise, or should a Grantee wish to dispose of any of its poles, conduit or manholes, being used by the Grantor, the Grantor shall have the option to purchase them in place for their fair market value.

D. 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, and its successor document, 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. Even when not required, underground installation is preferable to the placing of additional poles.

E. 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, as amended, as well as in conformance with all applicable state and municipal ordinances and codes of general applicability. 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 Grantor, promptly replace and restore all such surfacing to a reasonably comparable condition. 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)
- * All Federal, State and Municipal Construction Requirements, including FCC Rules and Regulations

* All Building and Zoning Codes, as the same exist or may be amended hereafter

* City Standard Specifications

F. 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 prior placement of gas, electric, telephone fixtures, water hydrant, 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 lawful requirements of the Grantor.

G. Moving Permits. The Grantee shall, on request of any persons holding a moving permit issued by the Grantor, 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 ten (10) business days advance notice to arrange for such temporary changes.

H. Authority To Trim Trees and Shrubbery. The Grantee shall have the authority to trim trees or 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, or other equipment. The Grantee shall reasonably compensate the Grantor 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 Grantee. Such replacement shall satisfy any and all obligations Grantee may have to the Grantor pursuant to the terms of this subsection.

I. 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 based upon the corporate boundaries at the time of the granting of the franchise.

J. Underground Construction. Grantee shall participate in and use Iowa One Call and ensure that cable is buried pursuant to standards established by Iowa One Call or any state mandated successor agency.

K. Temporary Drops. Temporary drops shall be buried within two months of installation, except during the winter months which

shall be defined as November 1st to April 1st. In the event that the Grantee fails to bury any cable drops, within the two month period, the Grantee shall provide basic and expanded basic cable service without charge to the affected cable subscriber from the last date that the drop was to have been buried to that actual date that it is buried.

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

M. Private Easements. No cable, line, wire, amplifier, converter or other pieces 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 the property involved, unless a private easement is determined to be available for use by the Grantee in accordance with applicable law.

6. Extension of Service. Any franchise granted pursuant to this chapter shall require that a Grantee shall, at its expense, promptly extend its system to have service available to all potential subscribers of:

A. The corporate limits of the City and newly annexed areas to the City, not then served by a cable system, where the average density is at least six (6) potential subscribers per lineal one quarter (1/4) mile of the proposed trunk and feeder cable route.

B. Any new single family dwelling unit, commercial establishment, or potential subscriber within four hundred (400) feet of the existing distribution system in the City, upon request of the potential subscriber.

C. No customer shall be refused service arbitrarily. However, for unusual circumstances, such as (1) existence of more than 400 feet of distance from the distribution cable to the connection point of service to the customers, or a (2) density of less than six (6) potential subscribers per 1320 cable-bearing strand feet of 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 the aid of construction to be borne by the Grantee and the customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per one quarter (1/4) mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals six (6) potential subscribers.

Customers 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 the construction borne by such potential customers be paid in advance.

7. Service to Public Buildings. Any Grantee shall upon request, provide without charge, one outlet of basic service and expanded basic service to those public buildings identified in the franchise agreement in accordance with the terms set forth in the franchise agreement.

8. Customer Service Standards. Any Grantee shall adhere to the FCC's customer service standards contained in Chapter 116 of this Code of Ordinances.

9. Local Office/Payment Center.
 - A. A Grantee shall establish a payment center conveniently located within the City, which shall be open during normal business hours, and adequately staffed to accept subscriber payments and respond to service requests and complaints.
 - B. 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. Trained representatives of the Grantee will be available to respond to subscriber telephone inquiries during normal business hours.
 - C. After normal business hours, an access line will be available to be answered by a service or 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.
 - D. The customer bill payment location will be open from 9:00 a.m. – 5:00 p.m. Monday through Friday and will be conveniently located.
10. Deposits. If required by federal law, a Grantee shall bear interest at the minimum lending rate required by law on any subscriber deposit or a rate equal to that paid by the Grantor for water and/or sewer deposits.
11. Subscribers Antennas. A Grantee shall not require the removal of any potential or existing subscriber's antenna as a condition of provision of service, except with the consent of the cable subscriber.
12. Disconnection. There shall be no charge for a disconnection of cable service. If any subscriber fails to pay a fee or charge, a Grantee may disconnect the subscriber's service. Such disconnection shall not be effected until the subscriber has been given ten (10) days advance written notice of the intention to disconnect. After disconnection, upon payment of any required delinquent fee or reconnection charge, the Grantee shall reinstate the subscriber's service.
13. Reconnections. A Grantee shall restore service to customers wishing restoration of service provided customer shall first satisfy any previous obligations owed.
14. Downgrades. Subscribers shall have the right to have cable service disconnected or downgraded in accordance with FCC rules. The reduced 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 thirty (30) days from the date of termination of service.

15. Termination of Service. Within 30 days of termination of service to any subscriber for any reason, a Grantee may, upon the subscriber's written request, promptly remove all its aerial facilities and equipment from the subscriber's premises, pursuant to FCC rules and regulations.

16. Subscriber Credit for Service Interruptions. For service interruptions of over twenty-four (24) hours, the Grantee shall provide, at the subscriber's verbal or written request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each 24-hour period service is interrupted.

17. Service Repair Standards. A 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 occur during periods of minimum use of the cable system. A written log or an equivalent stored in computer memory and capable of access and reproduction shall be maintained for reported service interruptions, as required by this chapter.

18. Refunds to Subscribers.

A. If a 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.

B. If any subscriber terminates for any other reason, a Grantee shall refund the unused portion of any prepaid subscriber service fee on a daily pro rata basis. The effective date used to pro rate such refunds shall be the date that the subscriber contacts the Grantee or a mutually agreed upon date.

C. Any disputes arising under this subsection shall be resolved in accordance with Section 114.12 (5).

19. Channel Card. The Grantee shall distribute to all subscribers via direct mail or bill stuffers no less than annually an accurate and up-to-date channel card listing the cable channels and services available over the cable system. A revised channel card shall be distributed within thirty (30) days after a change or an addition in channels or services offered affecting five (5) or more channels.

20. Customer Handbook. A 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.

21. Subscriber Privacy. A Grantee shall abide by current federal law and FCC regulations and Section 631 of the Cable Act regarding protection of subscriber privacy.

22. Discriminatory or Preferential Practices. A Grantee shall not, in making available the services or facilities of its cable 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 not subject any person to any prejudice or disadvantage, based on their race, color, national origin or gender. This provision shall not prohibit promotional campaigns to stimulate subscriptions to the cable 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.

23. Identification of Employees. Every field service and installation employee of the Grantee shall be clearly identified by an identification card, badge or uniform shirt. All employees of Grantee shall display proper identification upon request of a subscriber, provided that the Grantor requires all utilities operating in the City to do the same. Every field service and installation vehicle of the Grantee shall be clearly marked by logo or decals.

114.10 SYSTEM DESIGN AND EQUIPMENT REQUIREMENTS.

1. All Channels Emergency Alert System. The Grantee shall, in the case of any emergency or disaster, make its entire cable system available without charge to the Grantor or to any other governmental or civil defense agency that the Grantor shall designate. The cable system shall be engineered to provide an audio and video alert system to allow authorized officials to automatically override the audio and video signal on all channels and transmit and report emergency information pursuant to FCC regulations. The Franchising Authority 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 Franchising Authority, including, but not limited to, reasonable attorney's fees and costs, provided that the emergency alert system is in good repair and is operational as required by FCC regulations and the Franchise Agreement.

The Grantee will install and maintain a back up generator at its headend that will provide the needed power to generate the headend in the event of a power outage.

2. Switching Device. A Grantee, upon request from any subscriber, shall install at a reasonable charge 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.

3. Parental Control Devices. Upon request, and within one hundred twenty (120) days, Grantee shall provide at a reasonable charge to subscribers, parental control devices that allow any channel or channels to be locked out. Such devices shall block both the video and the audio portion of such channels 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.

4. Educational and Governmental Channels. The Grantee shall provide at least two (2) dedicated channels for educational and governmental programming. Such channels shall be operated in accord with FCC rules and regulations. The Grantee shall make no charge for educational and governmental use of such channels. The Grantor or its designee shall exercise sole control over the operation of and shall establish rules providing for access to the education and government channels. If agreed by the Grantor and Grantee, any commercial leased access channel which carries governmental programming broadcast by the Grantor may be designated as the government channel.

5. Access Equipment and Facilities Fee. If authorized by the Grantor, and after sixty (60) days notice from the Grantor to a Grantee, a Grantor shall provide ongoing support for public, educational, and governmental access equipment and facilities in the amount of not to exceed seventy-five cents (\$.75) per subscriber per month for the entire term of the franchise payable in the same manner as the franchise fee payment pursuant Section 114.11 (1). The Grantor acknowledges that this amount shall not be considered gross revenues subject to the payment of franchise fees pursuant to Section 114.11 (1). Furthermore, payments of this ongoing support 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 Grantor by a Grantee pursuant to Section 114.11 (1). A Grantee shall be allowed to collect such fee as a pass through to cable subscribers. This fee shall be revised on an annual basis in accordance with the consumer price index.

6. Leased Access Channels. A Grantee shall make a portion of its remaining unused channels available for lease pursuant to Section 612 of the Cable Act.

7. Interference. The Grantee's cable 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 on the cable system.

8. Additional Services. 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.

9. Technical Standards. The cable system shall be operated and maintained in compliance with FCC Rules and Regulations Technical Standards K of Part 76 of Chapter 1 of Title 47 of the Code of Federal Regulations, as revised or amended from time to time. FCC proof of performance test results shall be delivered to the Grantor upon written request of the Grantor. Grantee shall file a copy of test results performed by the FCC or other governmental regulatory agencies on the cable system with the Grantor, upon written request of the Grantor.

10. Filing of Maps. Upon request of the Grantor, the Grantee shall file with the Grantor strand maps, showing the location of all property and facilities of the Grantee within the City. All maps supplied by the Grantee shall be considered confidential and proprietary.

114.11 REGULATIONS BY THE FRANCHISING AUTHORITY.

1. Franchise Fee.

A. Payment. In consideration for the use of the streets and public ways of the City for the construction, operation, maintenance, and reconstruction of a cable system within the City, the Grantee shall pay to the Grantor an annual franchise fee up to five (5) percent of the Grantee's gross revenues, as defined herein, and as set by resolution of the Council.

B. Quarterly Payments. Payment due to the Grantor under the Franchise Agreement shall be made quarterly at the City Clerk's office not later than forty-five (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 one and one-half percent (1 1/2%) per month from the date due. Each payment shall be accompanied with a detailed report showing the basis for the

computation, and 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, premium channel revenues, shopping service revenue, revenue from other sources such as contracted or subleased cable services, pay per view, miscellaneous revenue, and such other relevant facts, as may be required by the Grantor, necessary to determine the accuracy of the franchise payment. 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 Grantor may have for additional sums payable by the Grantee. All amounts paid shall be subject to audit and recomputation by the Grantor. The Grantee shall permit the City, upon request with reasonable notice, to review at Grantee's local office its gross revenue records as may be necessary to monitor compliance with this subsection.

C. Franchise Fee Audit. A Grantee will fully cooperate with a franchise fee audit performed by a professional firm that is chosen by the Grantor. The costs associated with the audit will be paid for by the Grantor, except 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 for a reporting period.

D. Franchise Fee Increases. The Grantor may request an increase or decrease in franchise fees at any time during the term of the franchise, equal to the maximum percentage 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. Prior to making a final decision regarding an increase in franchise fees, the Grantor shall conduct a public hearing and shall grant an opportunity to the Grantee to discuss the proposed increase in franchise fee.

E. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be two (2) years from the date on which payment by a Grantee is due.

F. Annual Review. On an annual basis, Grantee shall provide the City with a statement of annual gross revenues signed by an officer of the Grantee, reflecting the amount of franchise fees paid to the City and the method the amount was computed. The Grantee agrees to permit the City, upon request with reasonable notice, to

review at Grantee's local office its gross revenue records as may be necessary to monitor compliance with this subsection.

2. Rates and Charges. The Franchising Authority may regulate rates for the provision of basic cable and equipment, as permitted by the Cable Act.

3. Franchise Renewal. Any proceedings undertaken by the Franchising Authority that relate to the renewal of a 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.

4. Conditions of Sale. If a renewal or extension of a Grantee's franchise is denied or the franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the cable system or by its actions lawfully effects a transfer of ownership of the cable system to another person, any such acquisition or transfer shall be at a price determined pursuant to the provisions set forth in Section 627 of the Cable Act. In the case of a final determination of a lawful revocation of the franchise, at the Grantee's request, which shall be made in its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its system to a qualified third party. During such a period of time the Franchise Authority shall authorize the Grantee to continue to operate pursuant to the terms of its prior franchise. However, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its system which is reasonably acceptable to the Franchise Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. The Grantee may continue to operate its system during the six month period and it shall not be deemed to be a waiver or extinguishments of any right of either the Franchising Authority or the Grantee.

5. Transfer of Franchise.

A. Transfer. Any franchise granted under this chapter shall be a privilege to be held for the benefit of the public. Any franchise so granted cannot, in any event, be sold, transferred, leased, assigned or disposed of, including, but not limited to, by forced or voluntary sale, except to entity controlling, controlled by or under common control with the Grantee, without the prior written consent of the Franchising Authority. Such consent as required by the Franchising Authority shall be given or denied no later than one hundred twenty

(120) days following any request and shall not be unreasonably withheld. Prior consent shall not be required when transferring the franchise between wholly-owned subsidiaries of the same entity. Nor shall such consent be required for a transfer in trust, by mortgage, by other hypothecation, or assignment of any rights, title, or interest of the Grantee in the cable system in order to secure indebtedness.

B. Ownership or Control. In the event that the Grantee sells or otherwise transfers ownership in the cable system, such sale or transfer shall conform to Section 617 of the Cable Act. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Franchising Authority may in accordance with Section 617 inquire into the qualifications of the prospective controlling party, and the Grantee shall assist the Franchising Authority in any such inquiry. In seeking the Grantor's consent to any change in ownership or control, the transferee shall have the responsibility:

(1) To show to the satisfaction of the Franchising Authority whether the proposed purchaser, transferee, or assignee (the "proposed transferee), which in the case of a corporation shall include all directors and all persons having a legal or equitable interest of fifty percent (50%) or more of the voting stock:

*Has ever been convicted or held liable for acts involving moral turpitude including, but not limited to, any violation of Federal, State or local law or regulations, or is presently under an indictment, investigation or complaint charging such acts;

*Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him, or them by any court of competent jurisdiction; or

*Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a cable system. The Franchising Authority retains the right to withhold approval of the transfer until the transferee has provided the information required in this subsection.

(2) To establish the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee and such other data to determine the legal, financial, and technical qualification of the transferee.

(3) To establish that the technical capability of the proposed transferee is such as shall enable it to maintain and operate the cable system for the remaining term of the franchise under the existing franchise terms.

C. Any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Franchising Authority that the financial institution, or its designee, as approved in writing by the Franchising Authority, shall take control and operate the cable system in the event of a Grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the cable system for a period exceeding one (1) year, unless extended by the Franchising Authority at its discretion, but during said period of time it shall have the right to petition the Franchising Authority to transfer the franchise to another Grantee. Except insofar as the enforceability of this subsection may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors rights generally, and further subject to applicable federal, state or local law, if the Franchising Authority finds that such transfer, after considering the legal, financial, character, technical and other public interest qualities of the proposed transferee, is satisfactory, the Franchising Authority shall transfer and assign the right and obligations of such franchise as in the public interest.

D. The consent or approval of the Franchising Authority to any transfer by the Grantee shall not constitute a waiver or release of the rights of the Franchising Authority, and any transfer shall by its terms, be expressly subject to the terms and conditions of any franchise agreement.

E. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory of the franchise agreement.

F. The Franchising Authority may approve the transfer or deny the transfer pursuant to Section 617 of the Cable Act.

G. When the Grantor approves a transfer under this subsection, the new Grantee shall indicate acceptance of the franchise as

specified in Section 114.08, including the filing of all necessary bonds, funds, proofs of insurance and certifications.

The restrictions of this subsection shall be effective immediately upon execution of a franchise agreement.

6. Right of Inspection of Construction. The Grantor shall have the right to visually inspect all construction or installation work performed subject to the provisions of this chapter and to make such visual inspections as it shall find necessary to ensure compliance with the terms of this chapter and other pertinent provision of law.

7. New Developments. The Grantee is encouraged to upgrade its facilities, equipment, and service so that its cable system is as advanced as the current state of production technology will allow. 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, pursuant to FCC rules and regulations.

8. City's Right to Purchase System. The City shall be entitled to a right of first refusal of any bona fide offer to purchase the cable system made to Grantee if the cable system is being sold separately and such sale is not linked in any way to the sale of any other cable system in a separate franchise area. Bona fide offer as used in this subsection means a written offer which has been accepted by Grantee subject to the City's rights under this chapter. The City shall notify Grantee of its interest in purchasing the cable system within thirty (30) days of the City's receipt from Grantee of copy of the written bona fide offer. Payment shall be made upon closing in readily available funds within one hundred twenty (120) days of the City's receipt from Grantee of a copy of the written bona fide offer. The price to be paid by the City shall be the fair market value of the cable system or the actual price which has been negotiated at arms length between the parties, whichever is greater or the amount offered in the bona fide offer if only the Jefferson franchise is to be purchased.

114.12 COMPLIANCE AND MONITORING.

1. Testing for Compliance. The Grantee shall meet or exceed all FCC minimum performance and technical standards. The Grantor shall have the right to compel the Grantee to provide results of Grantee's testing of the cable system. In the event that the Grantor has evidence of non-compliance, the Grantor may also perform technical tests of the cable system during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the cable system in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Such tests may be undertaken only after giving the Grantee reasonable notice thereof, not to be less than ten 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 hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority 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. Any such special performance tests or measurements required by the Grantor shall be reported to the Grantor within fourteen (14) business days after such test or measurements are performed. Such report shall include the following information: the nature of the complaint which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in said testing; the results of such tests; and the method in which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

2. Books and Records. The Franchising Authority 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 nondisruptive basis, as is reasonably necessary to ensure compliance with the terms hereof. Such records shall include, but shall not be 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 Franchising Authority 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 pertaining to the Jefferson cable system and franchise 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 Grantor upon written request to the Grantee.

4. Complaint Records. A written log or an equivalent stored in computer memory and capable of access and reproduction shall be maintained for all service interruptions or complaints regarding system service problems. The Grantee shall maintain detailed logs setting forth the date and substance of each service interruption or complaint regarding the system service problems received by phone, mail or other means during the preceding calendar month, 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 Grantor for review for one year thereafter. A "complaint" as used herein shall be a written or oral complaint from a subscriber regarding signal quality or service, but not regarding programming or rates which, in the case of oral complaints is not resolved within the original telephone call or visit from the subscriber.

5. Pattern of Complaints. Whenever a pattern of similar complaints emerges, or where there exists other evidence, which, in the judgment of the City, casts doubt on the reliability or quality of cable service, the City shall have the right and authority to compel the Grantee to test, analyze, and report on the performance of the system. The City's right under this provision shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

6. Performance Testing. Grantee shall perform all cable system tests and maintenance procedures as required by the FCC and this chapter.

7. Review Sessions.

A. Purpose of 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 a franchise throughout its term to achieve an advanced and modern cable 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 out solutions acceptable to both parties.

B. Topics to be Covered. The Grantor and the Grantee may hold scheduled review sessions on the third, sixth, ninth, and twelfth anniversary dates of the effective date of the franchise agreement. 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 canceled by mutual agreement of the Grantor and Grantee. The following topics may be discussed at every scheduled review session:

- Recent and Developing Judicial and Federal Communications Rulings
- Service Rate Structures
- Free and Discounted Services
- Application of New Technology or New Developments
- Cable System Performance
- Cable System Extension Policy
- Services Provided
- Programming Offered
- Customer Complaints Review
- Community Development and Education
- Interconnection
- New Services
- Subscriber privacy abuse issues
- New developments
- 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.

8. City Administrator/Grantee Annual Meeting. There will be an annual meeting between the City Administrator and the Grantee representative to discuss technology changes and the number and mix of the channels offered. The City Administrator will present information as to the community preferences for additional channels, if available. The Grantee representative will research the feasibility and monthly cost of the requested channels and present the information to the City Council as a proposal for consideration. The City Council will make a decision whether or not to accept the proposal.

9. Regulatory Responsibility. The Franchising Authority, acting alone or acting jointly with other Franchising Authorities, may exercise or delegate the following responsibilities:

- A. Administering the provision of a cable system franchise(s),
- B. Coordinating the operation of a local access channel and facilities,
- C. Providing technical, programming and operational support to public agency users, such as government departments, schools and health care institutions,
- D. Establishing jointly with a Grantee, or as otherwise specified in the franchise agreement, procedures and standards for use of channels dedicated to public use and the sharing of public facilities, if provided for in any franchise agreement,
- E. Planning the expansion and growth of public benefit cable services,
- F. Formulating and recommending long-range telecommunications policy.

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

- A. A summary of the previous year's activities in development of the cable system, including, but not limited to, services begun or dropped, subscribers gained or lost, and newly served geographic areas within the City limits.
- B. A summary of complaints, identifying the number and specific nature of complaints and their disposition.
- C. A list of key management people for the Jefferson franchise along with their addresses and job titles.

D. The annual report of the parent company, if a public corporation. Such report shall be construed to mean the report of the previous year.

E. The total estimated annual value of the potential revenue from cable services provided in the service area without charge or provided under a barter arrangement, along with the total estimated number of persons who are provided cable services in the service area without charge or under a barter agreement.

F. A detailed revenue statement including a breakdown of all revenue sources upon which the Grantor can verify the accuracy of franchise fees.

114.13 INSURANCE AND INDEMNIFICATION.

1. Indemnification. Any Grantee shall defend, indemnify, protect, and hold harmless the Grantor from and against any and all liability, losses, and damage to property or bodily injury or death to any person, including payments made under workmen's compensation laws, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance, or operation of Grantee's cable system and caused by any act or failure to act on the part of the Grantee, its agents, officers, servants, or employees. The Grantor shall give the Grantee written notice of its obligation to indemnify, within 30 days following service of a petition or other similar pleading. If the Grantor determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Grantor.

2. Insurance Coverage and Notifications. A Grantee shall maintain insurance in such amounts and kinds of coverage as may be specified by the Grantor in the franchise agreement. Such coverage may be reasonably adjusted by the Grantor with ninety (90) day notification, provided that the Grantor demonstrates the need for increases in coverage. The Grantee shall maintain such insurance with insurance underwriters authorized to do business in the State of Iowa. All policies shall name the Grantor, its employees, servants, agents, and officers as additional insured parties. Each policy shall provide that it may not be canceled nor the amount of coverage altered until thirty (30) days after receipt by the City Clerk of a registered mail notice of such intent to cancel or alter coverage. The Grantee shall provide a certificate of insurance designating the Grantor as an "additional insured." The Grantee shall maintain and provide to the Grantor proof of public liability insurance for not less than the amounts specified in the franchise agreement.

3. Insurance for Contractors and Subcontractors. Any Grantee shall provide coverage for any contractor or subcontractor involved in the construction, installation, maintenance or operation of its cable 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 the Grantee's cable 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 114.14 (7) shall apply.

5. Receivership. The City shall have the right to cancel this franchise one hundred twenty (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 one hundred twenty (120) days, or less:

A. Within one hundred twenty (120) days after being elected or appointed, such receiver or trustee shall have fully complied with all provisions of this chapter and remedied all defaults there under; 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. Continuity of Service.

A. Right to Continuous Service. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the cable system, or the Franchising Authority gives notice in accordance with the franchise or this chapter of intent to terminate or fails to renew this franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service for 6 months. In the event of a change of Grantee, or in the event a new operator acquires the cable system, the original Grantee shall cooperate with the Franchising Authority, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenue for any period during which it operates the cable system, and shall be entitled to reasonable costs for its services when it no longer operates the cable system.

B. Right of Franchising Authority to Operate Cable System. In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Franchising Authority or without just cause, the Franchising Authority may, working in conjunction with any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Franchising Authority or a permanent operator is selected. If the Franchising Authority is required to fulfill this obligation for the Grantee, then during such period as the Franchising Authority fulfills such obligation, the Franchising Authority shall be entitled to a reasonable management fee.

7. Franchise Processing Costs.

A. Initial Franchises. For an initial franchise awarded, the costs to be borne by the Grantee shall include, but shall not be limited to, all costs of publication of notices prior to any public meeting, publication of relevant ordinances and franchise agreements, incurred by the Franchising Authority.

B. Franchise Renewal. For a franchise renewal, the Grantee shall reimburse the Franchising Authority cost of publication of notices publication of relevant ordinances, and publication of franchise agreements.

C. Franchise Transfer. For a franchise transfer, the transferee shall reimburse the Franchising Authority the cost of publication of notices, publication of relevant ordinances and publication of franchise agreements. The Franchising Authority reserves the right to withhold approval of such transfer until all costs have been reimbursed by the transferee.

D. Other Costs. The publication costs provided for in this subsection shall be in addition to any other inspection or permit fee or other fees due to Franchising Authority under any other ordinance of general applicability.

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 generally applicable 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.

114.14 ENFORCEMENT AND TERMINATION OF FRANCHISE.

1. Notice of Violation. In the event that the Franchising Authority 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 described in subsection 1: (a) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority 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 described in subsection 1 pursuant to the procedures set forth in subsection 2, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to subsection 2, the Franchising Authority shall schedule a public hearing to investigate the default. The Franchising Authority 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. Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any provision of the franchise, the Franchising Authority 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; or

C. In the case of a substantial default of a material provision of the franchise, declare the franchise agreement to be revoked in accordance with the procedures outlined in this subsection.

(1) The Franchising Authority 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 ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response satisfactory from the Grantee, it may then seek termination of the franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) 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.

(2) At the designated meeting, the Franchising Authority 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 Franchising Authority "de novo" and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the franchise in lieu of revocation of the franchise.

5. Prompt Compliance. The Grantee shall not be relieved of its obligation to comply with this chapter by reason of the Grantor's failure to enforce prompt compliance.

6. Impossibility of Performance. A Grantee shall not be held in default or noncompliance with the provisions of the franchise, nor 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. Lockouts,

- D. War,
 - E. National emergencies,
 - F. Fire,
 - G. Acts of God.
 - H. Strikes
7. Termination of Franchise.
- A. Grounds for Revocation. The Grantor reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:
- (1) If the Grantee should default in the performance of any of its material obligations under this chapter or the franchise and fails to cure the default within sixty (60) days after receipt of written notice of the default from the Grantor, or such longer time as specified by the Grantor.
 - (2) If a petition is filed by or against the Grantee under the Bankruptcy Act or any other insolvency or creditors' rights law, state or federal, and the Grantee shall fail to have it dismissed.
 - (3) If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of the Grantee's assets.
 - (4) If the Grantee makes an assignment for the benefit of creditors.
 - (5) If the Grantee violates any order or ruling of any state or federal regulatory body having jurisdiction over the Grantee, unless the Grantee or any party similarly affected is lawfully contesting the legality or applicability of such order or ruling and has received a stay from a Court of appropriate jurisdiction.
 - (6) If the Grantee evades any of the provisions of this chapter or the franchise agreement.
 - (7) If the Grantee practices any intentional fraud or deceit upon the Grantor or cable subscribers.
 - (8) If the Grantee materially misrepresents facts in the application for a franchise.
 - (9) If the Grantee ceases to provide services over the cable system for seven (7) consecutive days for any reason within the control of the Grantee.

B. 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 Grantor 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 114.13 (2) and the performance bond in subsection 9 of this section shall continue in full force and effect during the period of removal.

C. Reimbursement of Costs Pursuant to Subsections A and B of this Subsection. In the event of a failure by the Grantee to complete any work as required above or any work required by law or ordinance within the time established and to the reasonable satisfaction of the Grantor, after due notice and opportunity to cure, the City may cause such work to be done and the Grantee shall reimburse the Grantor the costs thereof within thirty (30) days after receipt of an itemized list of such costs or the Grantor may recover such costs as provided in subsection 8 of this section.

8. Security Fund.

A. Within ten (10) days after execution of the franchise agreement, the Grantee shall deposit with the City 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 Grantor having jurisdiction over its acts or defaults under the franchise, and the payment by the Grantee of any claims, liens, and taxes due the Grantor which arise by reason of the construction, operation, or maintenance of the system.

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

C. If the Grantee fails to pay to the Grantor any compensation within the time fixed herein; or fails after ten (10) days notice to pay to the Grantor any taxes due and unpaid; or fails to repay to the Grantor within such ten (10) days, any damages, costs, or expenses which the Grantor shall be compelled to pay by reason of any act or

default of the Grantee in connection with the franchise; or fails after three (3) days notice of such failure by the Grantor to comply with any provision of the franchise which the Grantor reasonably determines can be remedied by an expenditure of the security, the City Clerk may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the City Clerk shall notify the company of the amount and date thereof.

D. The security fund deposited pursuant to this subsection shall become the property of the Grantor 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.

E. The rights reserved to the Grantor with respect to the security fund are in addition to all other rights of the Grantor, 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 Grantor may have.

F. For violations of the provisions of this chapter, penalties shall be chargeable to the security fund as follows:

(1) For failure to obtain prior City approval regarding installation of various parts of the system pursuant to this chapter, the sum of one hundred dollars (\$100.00) per day.

(2) For failure to commence operations in accordance with this chapter, unless the Council approves the delay for reasons beyond the control of the Grantee, the sum of two hundred dollars (\$200.00) per day.

(3) For failure to complete construction and installation of the system as provided for in this chapter, unless the Council approves the delay for reasons beyond the control of the Grantee, the sum of five hundred dollars (\$500.00) per day.

(4) For failure to provide data and reports as requested by the City Administrator and as required by this chapter, the sum of fifty dollars (\$50.00) per day.

(5) For failure to restore the security fund as required by this chapter, the entire security fund remaining shall be forfeited.

9. Faithful Performance Bond. Upon acceptance of a franchise, the Grantee shall submit and maintain throughout the term of the franchise, a faithful performance bond in the amount of one hundred thousand dollars (\$100,000.00). 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 one hundred dollars (\$100.00) per day for failure to meet the construction requirements of any franchise agreement.

10. Violations and Penalties. If the Grantee fails to comply with the requirements of this cable franchise regulatory ordinance, and a cable franchise agreement, then the City may invoke and secure compliance in accordance with the Standard Penalty and/or Municipal Infraction provisions of this Code of Ordinances.

114.15 MISCELLANEOUS PROVISIONS.

1. Actions of Parties. In any action by the Franchising Authority 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.

2. Equal Protection. In the event the Franchising Authority 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 Franchising Authority'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.

3. Notices. Unless expressly otherwise agreed between the parties, every notice or response required by a franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party ten (10) 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 or express mail service.

4. Waiver or Exemption. The Franchising Authority reserves the right to waive provisions of this chapter or exempt all Grantees from meeting provisions of this chapter, if the Franchising Authority determines such waiver or exemption is in the public interest.