

ORDINANCE NO. _____

AN ORDINANCE REPEALING CITY CODE TITLE 12, CHAPTER 4 ENTITLED BROADBAND TELECOMMUNICATIONS FRANCHISE ENABLING ORDINANCE, AND ADOPTING AMENDMENTS TO CHAPTER 4.

WHEREAS, the City has negotiated an extension of the franchise agreement with MCC Iowa LLC, pursuant to the Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and

WHEREAS, it is deemed in the interest of the City to provide for continuing cable television service to its residents, and

WHEREAS, the existing Broadband Telecommunications Franchise Enabling Ordinance needs to be updated due to changes in Federal law, the cable extension and the name change of the Iowa City Telecommunications Commission, should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IOWA CITY, IOWA THAT:
SECTION I. AMENDMENT. Title 12, Chapter 4 of the City Code is hereby repealed and a new Title 12, Chapter 4 is adopted as follows:

CHAPTER 4. CABLE TELEVISION

DIVISION 1. ENABLING ORDINANCE

- Sec. 12-4-1: Short Title
- Sec. 12-4-2: Definitions
- Sec. 12-4-3: Cable Television Administrator and Iowa City Telecommunications Commission
- Sec. 12-4-4: Regulatory Jurisdiction and Procedures
- Sec. 12-4-5: Significance of Franchise
- Sec. 12-4-6: The Cable Television Franchise
- Sec. 12-4-7: Operation of Franchise
- Sec. 12-4-8: Rights Reserved to the City
- Sec. 12-4-9: Applications for Franchise
- Sec. 12-4-10: Acceptance and Effective Date of Franchise
- Sec. 12-4-11: Termination of Franchise
- Sec. 12-4-12: Reports and Records of the Grantee
- Sec. 12-4-13: Franchise Payment
- Sec. 12-4-14: Liability and Indemnification
- Sec. 12-4-15: Bonds
- Sec. 12-4-16: Fees, Rates and Charges
- Sec. 12-4-17: Public, Education and Government Connection to Cable Television System
- Sec. 12-4-18: Interconnection of Network
- Sec. 12-4-19: Construction Timetable for Initial Construction
- Sec. 12-4-20: Construction Timetable for Rebuild Construction
- Sec. 12-4-21: Network Description
- Sec. 12-4-22: Network Technical Requirements
- Sec. 12-4-23: Performance Measurements
- Sec. 12-4-24: Construction Standards
- Sec. 12-4-25: Erection, Removal and Common Use of Poles
- Sec. 12-4-26: Construction Reporting Requirements
- Sec. 12-4-27: Channels to be Provided
- Sec. 12-4-28: Conditions of Street Occupancy
- Sec. 12-4-29: Unauthorized Connections or Modifications
- Sec. 12-4-30: Preferential or Discriminatory Practices Prohibited
- Sec. 12-4-31: Installations, Connections, and Other Services
- Sec. 12-4-32: Service Calls and Complaint Procedures
- Sec. 12-4-33: Transfer
- Sec. 12-4-34: Publications Costs
- Sec. 12-4-35: Ordinances Repealed
- Sec. 12-4-36: Separability
- Sec. 12-4-37: Time is of the Essence to this Ordinance
- Sec. 12-4-38: No Waiver of Rights

DIVISION 2. RATE REGULATIONS

Sec. 12-4-39: Rate Regulation Proceedings

Sec. 12-4-40: Certification

Sec. 12-4-41: Notification of Changes

Sec. 12-4-42: Cable Official

Sec. 12-4-1: Short title.

This article shall be known and may be cited as the Cable Television Franchise Enabling Ordinance.

Sec. 12-4-2: Definitions.

For the purpose of this article the following terms, phrases and words and their derivations shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future and words in the singular number include words in the plural number.

Access or public, government, and educational access channels shall mean public, educational, government, library, and University access channels.

Additional service shall mean a subscriber service provided by the Grantee for which a special charge is made based on program or service content, time or spectrum space usage.

Annual gross revenues means all revenue received by the Grantee from all sources in connection with the operation of Grantee's cable television system. Gross revenues shall include, without limitation, amounts for all cable service, including but not limited to, basic service and tier service, premium and pay-per-view services, advertising, leased access, installation and all other revenues derived from the operation of Grantee's cable television system. Gross revenues shall not deduct the following: (1) any operating expense, (2) any accrual, including without limitation, any accrual for commissions or (3) any other expenditures, regardless of whether such expense, accrual or expenditure reflects a cash payment, but revenue shall be counted only once in determining Gross Revenue. Gross revenues shall also include the revenue of any affiliate, subsidiary, parent, or any person or entity in which each Grantee has a financial interest, derived from the operation of the cable television system for advertising, or for any other business operation of the cable television system, to the extent such revenue is derived through any means that has the effect of avoiding the payment of franchisee fees that would otherwise be paid to the Grantor. Revenues of both Grantee and an affiliate, subsidiary, parent, or any person or entity in which the Grantee has a financial interest that represent a transfer of funds between them and that would constitute gross revenues of both the Grantee and the affiliate, subsidiary, parent, or any person or entity in which the Grantee has a financial interest shall be counted only once for purposes of determining gross revenues. Gross revenues shall not include franchise fees, any other fee, assessment, sales or other similar tax imposed by law on subscribers or that Grantee is legally obligated to collect.

Basic subscriber television services or basic services means a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following: all signals carried in fulfillment of the Cable Act, Sections 614 and 615; any public, educational, and governmental access programming required in this ordinance or the franchise; any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. Additional signals may be added to the basic tier by the Grantee.

Cable service means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (ii) subscriber interaction, if any, which is required for the selection (or use) of such video programming or other programming service or as otherwise provided by law or regulation.

Cable television system channel capacity means the highest total number of cable television channels on which television signals from separate sources may be delivered downstream simultaneously to every subscriber in the network. The network may have additional channel capacity for specialized or discrete purposes, but the technical performance specified shall not be materially degraded thereby.

Cable television channel means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission.

Cable television system or cable system, also referred to as system, means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public rights-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the Cable Act, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric

utility systems. Cable television system, for the purpose of this Article, shall include facilities owned or operated by a person providing cable service or multiple channels of video programming to subscribers on private property that receive cable service or multiple channels of video programming in whole or in part via cable, fiber or other wires or lines that are within the public-rights-of-way regardless of whether the person providing cable service or multiple channels of video programming on private property receives video programming transmission service, cable service, or other multiple channel video service from a common carrier pursuant to tariff or otherwise or other person that retains the ownership, control and responsibility for all facilities located outside of the private property line.

Channel frequency response means within a cable television channel, the relationship as measured at a subscriber terminal between amplitude and frequency of a constant-amplitude input signal at all specified frequencies within each channel.

City shall mean the City of Iowa City, Iowa, its officers and employees unless otherwise specifically designated, the area within the territorial City limits of the City and such territory presently outside the City limits over which the City may assume jurisdiction or control by virtue of annexation.

Closed-circuit or institutional service means such video, audio, data and other services provided to and between institutional users. These may include, but are not limited to, one-way video, two-way video, voice, audio or digital signals transmitted among institutions and/or to residential subscribers.

Commence operation means operation will be considered to have commenced when sufficient distribution facilities have been installed so as to permit the offering of full network services to at least twenty-five (25) percent of the dwelling units located within the designated service area.

Commission refers to the Iowa City Telecommunications Commission.

Communications Policy Act or Cable Act means the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 as it may be amended or succeeded.

Complaint means an oral or written indication from a subscriber of a problem with any aspect of cable service.

Contiguous shall mean abutting or within two hundred (200) feet.

Council shall mean the City Council of the City of Iowa City, and any legally appointed or elected successor or agency.

Data grade shall mean coded transmissions primarily digital in nature.

Days shall mean business days.

Downstream means the direction of transmission over the cable television system from the head end or hub to a subscriber's terminal.

Drop shall mean a coaxial connection from feeder cable to the subscriber/user television set, radio or other terminal.

Fair market value means the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time.

FCC shall mean the Federal Communications Commission and any legally appointed or elected successor.

Fiber means a transmission media of optical fiber cable capable of carrying transmissions by means of light-wave impulses.

Fiber Node means the local transition point between the fiber distribution portion and the coaxial distribution portion of the upgraded cable communications system.

Franchise means a franchise contract entered into voluntarily by the Grantee, containing the specific provisions of the franchise granted, including referenced specifications, franchise proposal, applications and other related material. The franchise granted pursuant to this ordinance grants the nonexclusive rights to construct, operate and maintain a cable communications system along the streets and public ways and grounds within all or a specified area in the City. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances and laws of the City.

Franchise area means the entire City, or portions thereof, for which a franchise is granted under the authority of this ordinance. If not otherwise stated in the franchise, the franchise area shall be the corporate limits of the City, including all territory thereafter annexed to the City.

Franchise fee means the percentage, as specified by this ordinance, of the Grantee's gross revenues from all sources payable in exchange for the rights granted pursuant to this ordinance and the franchise agreement.

Full network service shall mean all basic services and additional services offered by the Grantee.

Grantee means all persons including, but not limited to, subsidiaries, parents or affiliate companies, associations or organizations having any rights, powers, privileges, duties, liabilities or obligations, under this article, and under the franchise ordinance, collectively called the franchise, and also includes all persons having any title to or interest in the system, whether by reason of the franchise itself directly or by interest in a subsidiary, parent or affiliate

company, association or organization by any subcontract, transfer, assignment, management agreement or operating agreement or an approved assignment or transfer resulting from a foreclosure of a mortgage security agreement or whether otherwise arising or created, and shall include the lawful successor, transferee, or an assignee of such franchisee or Grantee.

Head end shall mean the land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a cable television system, excluding the studio.

Hub configuration means a cable television system design technology wherein all transmission paths either originate or terminate at a central location within the community.

Installation shall mean the extension and/or construction of the system from the main trunk and/or feeder cable to subscribers' terminals except where such a procedure is required by this article without charge when it will mean the extension and/or construction of the system to one point in a designated building.

Local distribution center shall mean a facility, within the community remote from but connected to the hub, which distributes signals from the hub to a specified area in the cable television system.

Local distribution center shall mean a facility which originates from a local distribution center as opposed to the hub.

May is permissive.

Network noise means that combination of undesired and fluctuating disturbances within a cable television channel, exclusive of undesired signals of discrete frequency which degrade the reproduction of the desired signal and which are due to modulation processes, thermal effects and other noise-producing effects, not including hum. Network noise is specified in terms of its RMS voltage or its mean power level as measured in a four-MHz band above the lower channel boundary of a cable television system.

New housing area shall mean any area containing any newly constructed, rehabilitated, or restored residential or commercial unit which does not exist prior to the effective date of the franchise.

Open video system shall mean any channel or a facility consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide cable television service, which includes video programming, which is provided to multiple subscribers within a community, and which the Federal Communications Commission or its successor has certified as compliant with Part 76 of the Rules of the Federal Communications Commission, 47 C.F.R. Part 76, as amended from time to time.

Physical miles of plant shall mean total miles of trunk, feeder, super-trunk, and fiber optic cable.

Person means an individual, partnership, association, organization or corporation or any lawful successor transferee.

Public-rights-of-way or streets and public grounds means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way now or hereafter held by the City which shall entitle the City and the Grantee to the use thereof for the purpose of installing and maintaining the Grantee's cable television system. No reference herein, or in any franchise, to the streets and public grounds shall be deemed to be a representation or guarantee by the City that its title to any property is sufficient to permit its use for such purpose, and the Grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the City as the City may have the undisputed right and power to give.

Reasonable notice shall mean the provision of notice of contemplated action delivered at least forty-eight (48) hours prior to such action.

Resident means any person residing in the City or as otherwise defined by applicable law.

Residential subscriber means a subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.

Sale shall include any sale, asset exchange or offer for sale.

Shall and must means each is mandatory.

Strand mile shall mean messenger strand as measured from pole to pole without taking into consideration sag or downguys, and for buried plant, actual trench feet.

Studio shall mean the land, electronic processing equipment, towers, building, cameras, lights and other appurtenances normally associated with and located at the Grantee's local origination and/or public access plants of a cable television system, excluding the head end.

Subscriber terminal means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set or by remote control.

System facilities means the cable communications system constructed for use within the City, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, health and property security systems, equipment or facilities located within the corporate limits of the City designed, constructed or wired for the purpose

of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio, radio, television and electronic signals to and from subscribers, in the City and any other equipment or facilities located within the corporate limits of the City intended for the use of the cable communications system; provided, however, such system facilities excludes building, contracts, facilities, and equipment where its sole use is for providing service to other system facilities located outside the City limits.

Substantially completed means operation will be considered substantially completed when sufficient distribution facilities have been installed so as to permit the offering of full network services to at least ninety (90) percent of the dwelling units in the service area to which access is legally and reasonably available.

Terminal isolation means at any subscriber terminal, the attenuation between that terminal and any other subscriber terminal in that network.

Upstream means a signal originating from a terminal to another point in the cable television system including video, audio or digital signals for either programs or other uses such as security alert services, etc.

Sec. 12-4-3: Cable Television Administrator and Iowa City Telecommunications Commission.

- A. The City Manager is hereby authorized to appoint a Cable Television Administrator for the purpose of exercising the City's continuing administration of the franchise. Such responsibility shall include but not be limited to the following matters:
1. Receive and investigate such complaints, disputes or disagreements as may be directed or referred to the City of Iowa City, Iowa, between subscribers or potential subscribers and Grantees of a cable television system and other distribution systems interconnected with the cable television system, not first able to resolve their differences.
 2. Report recommendations upon complaints, disputes or disagreements after investigation to the Iowa City Telecommunications Commission for the issuance of finding.
 3. Review and audit reports, records, communications and Grantee regulations submitted to the City of Iowa City, Iowa, and conducting such inspections of the system as may be necessary in support of such review as provided for in the Cable Television Enabling Ordinance.
 4. Work with the public and the media to assure that all tariffs, rates, charges and rules pertinent to the operation of the cable television system in the City of Iowa City, Iowa, are made available for inspection by the public at reasonable hours and upon reasonable request.
 5. Confer and coordinate with the Grantee on the interconnection of the City's cable television system with other similar networks.
 6. Advise the Iowa City Telecommunications Commission.
 7. Other such duties as the City Manager or Iowa City Telecommunications Commission may assign.
 8. Promote usage and understanding of the access channels.
 9. Research and recommend new technologies that may be useful to the City, community, and cable system.
- B. *Commission established:* Within thirty (30) days of the granting of the first franchise, there shall be appointed a Commission to be known as the Iowa City Telecommunications Commission.
- C. *Composition and term:* The Iowa City Telecommunications Commission shall consist of five (5) citizens of the City appointed by the City Council for a term of three (3) years; except, that the first appointees shall be appointed one (1) for a term of one (1) year, two (2) for a term of two (2) years and two (2) for a term of three (3) years; and thereafter, each shall be appointed for a term of three (3) years. Following system completion, it is recommended that a majority of the members be subscribers to the system at the time of their appointment.
- D. *Powers and duties:* The duties of the Iowa City Telecommunications Commission shall be as follows:
1. Resolving disputes or disagreement between subscribers, potential subscribers and Grantee should such parties be unable first to resolve their dispute. The Iowa City Telecommunications Commission shall conduct a public hearing upon any petition by any person seeking resolution of a dispute concerning the operation of any franchise granted hereunder. The hearing shall be conducted pursuant to the Iowa Administrative Code, and following such hearing, the Iowa City Telecommunications Commission shall issue its finding or determination. Said finding or decision shall be final, and any person aggrieved may seek relief therefrom in the District Court of Iowa as provided by State law.
 2. Reviewing and auditing reports submitted to the City as required and said such other correspondence as submitted to the City concerning the operation of the cable television system so as to insure that the necessary reports are completed and fulfilled pursuant to the terms of this ordinance.
 3. Work with the public and the media to assure that all records, rules and charges pertinent to the cable television system in the City of Iowa City are made available for inspection at reasonable hours upon reasonable notice.
 4. Confer with the Grantee and advise on the interconnection of the City's cable system with other cable and communications systems.

5. Subsequent to the initial franchise, solicit, review and provide recommendations to the City Council for selection of applicants for franchise under this ordinance.
 6. Initiate inquiries, receive requests for review of rates charged by the Grantee and provide recommendation on such actions to the City Council.
 7. Conduct evaluations of the system at least every three (3) years with the Grantee and, pursuant thereto, make recommendations to the Council concerning system improvements and amendments to this ordinance or any franchise agreement.
 8. Establish and administer sanctions as authorized by the City Council to insure compliance with this ordinance.
 9. To make recommendations to the Grantee of the cable television system and to the educational and governmental users of the educational and governmental access channels.
 10. To insure that the Grantee makes the public access channel available to all residents of the City on a nondiscriminatory basis.
 11. To assure that the operation of the public access channel be free of program censorship and control.
 12. Cooperate with the entities operating access channels as those entities develop rules for such channels.
 13. To perform such other duties and functions relative to public access channels as may be appropriate in order to maximize its use among the widest range of individuals, institutions and other organizations within the City. This shall include recommendations to the City Council for utilization of the annual franchise payment.
- D. *Rules and regulations:* The Iowa City Telecommunications Commission shall adopt such rules and regulations as are necessary to carry out its functions and to insure that due notice is given to all parties concerning any hearing on any complaints to said Iowa City Telecommunications Commission and the hearings are held promptly in accordance with reasonable notice to all parties. The Iowa City Telecommunications Commission shall also have such powers to include the election of its own officers.
- Sec. 12-4-4: Regulatory jurisdiction and procedures.**
- A. *Continuing regulatory jurisdiction:* The City shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted hereunder and may from time to time adopt such reasonable rules and regulations as it may deem necessary for the conduct of the business contemplated thereunder. Provided, however, such exercise of rights or powers subsequent to the effective date of a franchise will not impair the rights of the Grantee thereunder, and if locally imposed, place an undue financial burden on such Grantee.
- B. *Regulatory procedures:*
1. The Iowa City Telecommunications Commission shall consider any inquiry or proceeding, excluding those described in Paragraphs 2 and 3 below, requiring City Council action to be taken in regard to the cable television system or franchise, whether upon application or request by the Grantee or any other party or on its own motion and shall submit such consideration, together with the Iowa City Telecommunications Commission's recommendation, to the City Council. Any action by the City Council on any Iowa City Telecommunications Commission recommendation shall be taken only after thirty (30) days notice of said proposed action, inquiry or proceeding is published in the official newspaper having general circulation and a copy of said notice is served upon the Grantee. The Grantee shall have an opportunity to respond at the hearing and/or in writing. Members of the public shall have an opportunity to respond or comment in writing on the proposed action and appear at said proceeding or hearing; however, such hearing or proceeding shall be set no later than ninety (90) days after notice to the Grantee and the City Council shall act upon this proceeding within one hundred eighty (180) days of the notice of hearing unless such time is extended by agreement between the City Council and the Grantee. The decision of the City Council shall become a final determination.
 2. Rate regulation procedures shall be conducted in accordance with the timeframe established in Division 2, Rate Regulations.
 3. The City shall have one hundred twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the City. If the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.
 4. The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response, including response by the public, the person or persons in authority to whom such responses shall be addressed and such other procedures as may be specified by the City Council. If a hearing is to be held, the public notice shall give the date, location and time of such hearing. The Grantee will be provided with reasonable notice for any hearing conducted in regard to its operation.

C. *Triennial franchise review:*

1. On or about the third and sixth anniversaries of the effective date of the franchise, the City will schedule a public meeting or meetings with the Grantee to review the franchise performance, plans and prospects. The City may require the Grantee to reasonably make available specified records, documents and information for this purpose, and may inquire in particular whether the Grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.
2. The City shall first confer with the Grantee regarding modifications in the franchise which might impose additional obligations on the Grantee, and the Grantee may in turn seek to negotiate relaxations in any requirements previously imposed on it which are subsequently shown to be impractical.
3. Within thirty (30) days of the conclusions of such negotiations, the City may direct the Grantee to show cause why specified terms and conditions should not be incorporated into the franchise and the Grantee may similarly file with the City a written request that specified obligations of its franchise be removed or relaxed. Implementation of such requests shall correspond as nearly as possible with the procedures set forth herein. The Iowa City Telecommunications Commission will recommend to Council changes in the franchised rights and obligations of the Grantee only if it finds from all available evidence that such changes will not impair the economic viability of the system or degrade the attractiveness of the system's service to present and potential subscribers.

D. *Expiration:* Upon completion of the term of any franchise granted under this ordinance, the City may in its sole discretion grant or deny renewal of the franchise of the Grantee in accordance with the provisions of the Cable Act.

Sec. 12-4-5: Significance of franchise.

- A. *Franchise nonexclusive:* Any franchise granted hereunder by the City of Iowa City, Iowa, shall not be exclusive and the City reserves the right to grant a franchise to any person, firm, company, corporation or association at any time. The grant of one franchise does not establish priority for use over the other present or future permit or franchise holders or the City's own use of the streets and public grounds. The City shall at all times control the distribution of space in, over, under or across all streets or public grounds occupied by the cable communications system.
- B. *Franchise amendable:* The scope of any franchise granted hereunder shall be deemed amendable from time to time by mutual consent, to allow the Grantee and the City to innovate and implement new services and developments.
- C. *Privileges must be specified:* No privilege or exemption shall be inferred from the granting of any franchise unless it is specifically prescribed. Nothing in this article shall be deemed to require the granting of a franchise when in the opinion of the Council it would not be in the public interest to do so.
- D. *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 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 television system in the City, subject to limitations contained in this ordinance.
- E. *Previous rights abandoned:* A franchise granted hereunder shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by a Grantee or any successor pertaining to the construction, operation or maintenance of a cable communications system in the City. The acceptance of a franchise shall operate, as between Grantee and the City, as an abandonment of any and all such rights, privileges, powers, immunities and authorities within the City. All construction, operation and maintenance by the Grantee of any cable system in the City shall be under the franchise and not under any other right, privilege, power, immunity or authority.
- F. *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 lawful exercise of the police power by the City and other duly authorized regulatory state and federal bodies.
- G. *Pole use agreements required:* No franchise granted hereunder shall relieve the Grantee of any obligation involved in obtaining pole or conduit use agreements from the gas, electric and telephone companies, or others maintaining poles or conduits in the streets of the City, wherever the Grantee finds it necessary to make use of said poles or conduits.
- H. *No right of property:* The award of any franchise hereunder shall impart to the Grantee no right of property in or on City-owned property.
- I. *Franchise binding:* All provisions of this article and any franchise granted hereto shall be binding upon the Grantee, its successors, lessees or assignees.
- J. *General City ordinances:* Any franchise granted by the City is hereby made subject to the general ordinance provisions now in effect and hereafter made effective. Nothing in the franchise shall be deemed to waive the

requirements of the various codes and ordinances of the City regarding permits, taxes, fees to be paid, or manner of construction.

- K. *No waiver of rights:* No course of dealing between the Grantee and the City nor any delay on the part of the City in exercising any rights hereunder shall operate as a waiver of any such rights of the City or acquiescence in the actions of the Grantee in contravention of rights except to the extent expressly waived by the City or expressly provided for in the franchise.

Sec. 12-4-6: The cable television franchise.

No cable communications system, open video system, or person providing cable service shall be allowed to occupy or use the streets of the City or be allowed to operate within the City without a franchise granted pursuant to this Article. All cable television franchises in the City shall be subject to the terms of this Ordinance. Any franchise granted for an open video system shall comply with all sections of this Article, unless precluded from compliance by specific sections of applicable law.

- A. *Franchise required:* 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 cable service over a cable television system or an open video 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 article, and unless such franchise is in full force and effect. Any franchise granted for an open video system shall comply with all sections of this Ordinance, unless precluded from compliance with specific sections by Federal or state law, rule, or regulation.
- B. *Franchise applications:* Public Notice of Request for Proposals. The City may invite applications for a cable television franchise by means of a public notice advertising the availability of its Request for Proposals.
1. The public notice shall contain, but need not be limited to:
 - a. A description of the franchise area which is sought.
 - b. A statement that a formal Request for Proposals is available to prospective applicants from a City official whose name, address, and telephone number are specified.
 - c. A statement that applications for the franchise must be submitted in writing in the form and manner specified in the Request for Proposals no later than a date certain.
 - d. A statement that all applications will be made available for public inspection during normal business hours at a specified location.
- C. *Request for proposals:* Prior to inviting any applications for any television franchise, the City shall prepare a Request for Proposals that shall contain, but need not be limited to, the following:
1. A description of the cable television system and services desired by the City including any system specifications established by the City.
 2. A statement specifying the form that all applications shall follow.
 3. A statement indicating the amount of the application fee (if any) to be submitted with the application, and the manner in which such fee is to be submitted.
 4. A statement that all applications must contain the information required by the Request for Proposal.
 5. The closing date for the submission of applications.
 6. The name, address, and telephone number of the City official(s) who may be contacted for further information.
- D. *Review of qualifications:* Specific permission to operate a cable television system under the provisions of this article may be granted by the City Council of the City to any Grantee after: a review of the legal, character, financial, technical qualifications; an analysis of adequacy and feasibility of the Grantee's construction arrangements; an assessment of whether public, educational and governmental access channel and institutional network capacity, equipment, facilities, services, and financial support are reasonable; a determination of whether the proposal meets the future cable communications needs of the City; and a review of the provision of other such information, equipment, services and support as required by the City, and after the City Council has approved the Grantee's qualifications as a part of a public proceeding affording due process.
- E. *City discretion:* The City, at its discretion, may reject any application for a franchise. In awarding a franchise, the City: shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area; may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channels and institutional network capacity, equipment, facilities, services, and financial support; shall determine the ability of the proposal to meet the future cable communications needs of the City; and may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.
- F. *Requirement for public hearing on reasonable notice:* The City shall conduct a public hearing prior to awarding any cable television franchise. The hearing shall be preceded by reasonable notice to each of the franchise applicants and to the public, and shall be conducted by the City in accordance with the following procedures:

1. There shall be an agenda for the hearing which shall specify the proposal(s) to be considered at the hearing.
 2. Every person who has applied for a cable television franchise shall appear at the hearing either in person or by authorized representative. The application of any applicant not so appearing shall not be further considered, except for good cause shown.
 3. All applicants shall be given opportunity to participate in the hearing, but nothing contained herein shall limit the power of the presiding officer to establish reasonable time limits and otherwise limit repetitive statements or questions.
 4. The notice of hearing shall:
 - a. Conform to all relevant state and local laws and ordinances.
 - b. Describe the agenda to be considered at the public hearing.
 - c. Indicate that copies of all franchise applications are available for public inspection during normal business hours at a place to be specified in the notice.
- G. *Duration of franchise:* Upon filing by the Grantee of the proper acceptance, the bond and the required insurance and security fund, the franchise shall take effect as provided in Section 12-4-10 and shall continue in full force and effect for a term to be set by the Council in the franchise.
- H. *Exemptions:* Paragraphs B, C, D, E, and F of this section do not apply to an incumbent operator afforded renewal rights under Section 626 of the Cable Act.

Sec. 12-4-7: Operation of franchise.

- A. *Operation to be in accordance with rules:* The Grantee shall maintain and operate its cable television system in accordance with the Rules and Regulations of the Federal Communications Commission, the State of Iowa and/or the City as are incorporated herein or may be promulgated.
- B. *Interruption of service; notification:* The Grantee, whenever it is necessary to interrupt service over the cable television system for the purpose of network maintenance, alteration or repair, shall do so at such time as will cause the least amount of inconvenience to the subscribers, and unless such interruption is unforeseen and immediately necessary, the Grantee shall give reasonable notice thereof to the affected subscribers.
- C. *Office and phone for complaints:* The Grantee shall maintain an office within the City limits which shall be open during all normal business hours, including some week night and Saturday hours, have a listed local telephone number and be so operated that complaints and requests for repairs or adjustments may be received at any time.
- D. *Service records maintained:* The Grantee shall at all times make and keep a list of all complaints and interruptions or degradation of service received or experienced during the term of franchise. The records maintained above shall also include complaint response time and service restoration period and shall be continuously open to inspection, examination or audit, subject to subscriber privacy rights pursuant to Section 631 of the Cable Act, by any duly authorized representative of the City or member of the public.
- E. *Grantee rules and regulations:* The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonable and necessary to enable the Grantee to exercise its rights and perform its obligations under this article and any franchise granted hereunder.
 1. Rules to be in conformance with other regulations: None of such rules, regulations, terms and conditions promulgated under subsection (f) above shall be in conflict with the provisions hereof or the laws of the state, or the Rules and Regulations of the Federal Communications Commission or any rules and regulations promulgated by the City in the exercise of their regulatory authority granted hereunder.
 2. All rules to be filed with City: Three (3) copies of all rules, regulations, terms and conditions promulgated under subsection (f) above, together with any amendments, additions or deletions thereto, shall be kept currently on file with the City Clerk and another copy thereof shall be maintained for public inspection during normal business hours at Grantee's office in the City and the copy shall be provided to the Iowa City Telecommunications Commission; no such rules, regulations, terms, conditions or amendments, additions or deletions thereto shall take effect unless and until so filed and maintained. This paragraph is not intended to apply to the Company's personnel and other internal rules and regulations.
- F. *Subscribers' antennas:* The Grantee shall not require the removal or offer to remove or provide any inducements for removal of any potential or existing subscriber's antenna as a condition of provision of service.
- G. *Antenna switch:* The Grantee, upon request from any subscriber, shall install at a reasonable charge a switching device to permit a subscriber to continue to utilize the subscribers own television antenna.
- H. *Service response:* The Grantee shall provide same day service response, seven (7) days a week for all complaints and requests for repairs or adjustments received prior to 2:00 p.m. each day. In no event shall the response time for calls received subsequent to 2:00 p.m. exceed twenty-four (24) hours.
- I. *State of the art:* This section shall be reviewed by the City during its triennial reviews whose timeframes are set forth in Section 12-4-4 (C). In the event that the Grantee, its parent company, management firm or affiliates have installed state of the art improvements in any system of similar size owned by Grantee, its parent company,

management firm or affiliates, which increase channel capacity and provide additional cable service, make bi-directional capacity operational from the home, provide improvements in technological performance, provide for interactive services, and/or other substantial improvements, then the Grantee shall make said improvements available to the City of Iowa City subscribers within one (1) year.

The City shall hold a hearing to determine whether state of the art technology is required hereunder. Such hearing shall afford the Grantee an opportunity to make a presentation on the state of the art and whether the conditions specified herein indicate that a state of the art change is needed. The City may require the Grantee to implement state of the art changes which meet the threshold specified herein.

Sec. 12-4-8: Rights reserved to the City.

- A. *Governing requirement:* At all times during the term of the franchise, Grantee shall comply with all laws, rules or regulations of the City, state or federal governments, their regulatory agencies or commissions which are now applicable or may be applicable hereafter to the construction and operation of the cable communications system, including without limitation, all laws, ordinances, or regulations now in force or hereafter enacted. Nothing herein shall be deemed a waiver of Grantee's right to challenge the validity of any such law, rule or regulation.
- B. *Change in law or regulation:* Notwithstanding any other provisions of this ordinance to the contrary, the Grantee shall at all times comply with all laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the City under this ordinance or the franchise, or if in compliance with any local, state, or federal law or regulation, the Grantee finds conflict with the terms of this ordinance, the franchise, or any law or regulation of the City, then as soon as possible following knowledge thereof, the Grantee shall notify the City of the point of conflict believed to exist between such law or regulation and the laws or regulations of the City, this ordinance and the franchise. The City, at its option, may notify the Grantee that it wishes to negotiate those provisions which are affected in any way by such modification in regulations or statutory authority. Thereafter, the Grantee shall negotiate in good faith with the City in the development of alternate provisions which shall fairly restore the City to the maximum level of authority and power permitted by law. The City shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of this ordinance and the franchise, subject to applicable federal and state law.
- C. *Authority:* The City reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible, to regulate the cable television system, the franchise and the Grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the City, the City and the Grantee shall negotiate in good faith to determine what additional regulation by the City shall be permissible.
- D. *Right of amendment reserved to City:* The City may from time to time, add to, modify or delete provisions of this article as it shall deem necessary in the exercise of its regulatory powers. Provided, however, such exercise of rights or powers subsequent to the effective date of a franchise will not impair the rights of the Grantee thereunder, and if locally imposed, place an undue financial burden on such 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.
- E. *Grantee agrees to City's rights:* The City reserves every right and power which is required to be reserved or provided by an ordinance of the City, and the Grantee by its acceptance of the franchise agrees to be bound thereby and to comply with any action or requirements of the City in its lawful exercise of such rights or powers which have been or will be enacted or established, subject to federal and state law.
- F. *City's right of intervention:* The City shall have the right to intervene and the Grantee specifically agrees by its acceptance of the franchise not to oppose such intervention by the City in any suit or proceeding to which the Grantee is a party, provided, however, Grantee shall not be obligated to indemnify the City for any such suit.
- G. *Powers of the City:* Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the City.
- H. *City's right of inspection:* The City reserves the right during the life of any franchise granted hereunder to inspect all system facilities and property and supervise all construction or installation work performed subject to the provisions of this article and to perform network measurements to insure compliance with the terms of the article.
- I. *City's right of acquisition:* Upon expiration of the term of the franchise or revocation or other termination as provided by law, the City shall have the right to purchase the cable television system as specified in Section 12-4-11,D.
- J. *City's right of network installation:* The City reserves the right during the life of any franchise granted hereunder to install and maintain free of charge upon or in the poles and conduits of the Grantee any wire and pole

fixtures necessary for municipal networks, on the following conditions: that such installation and maintenance thereof does not interfere with the operation of the Grantee; that such fixtures be used for governmental and educational purposes, and the City agrees to indemnify the Grantee for such use.

Sec. 12-4-9: Applications for franchise.

No franchise may be granted until the applicant has successfully completed the application procedure.

- A. *Proposal bond and filing fee:* All applicants must provide a proposal bond as required herein and pay a nonrefundable filing fee to the City of ten thousand dollars (\$10,000.00) the time the application is submitted. This bond and filing fee does not apply to an incumbent operator afforded renewal rights under Section 626 of the Cable Act.
- B. *Request for proposal:* All applicants must complete the request for proposal (RFP) issued by the City which shall include but not be limited to the following:
1. 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).
 2. 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 article, management and marketing staff complement and procedures and, if available, the rules of operation for public access.
 3. Signal carriage: A statement of the television and radio services to be provided, including both off-the-air and locally originated signals.
 4. Special services: A statement setting forth a description of the automated services proposed as well as a description of the funds, services, and production facilities to be made available by the Grantee for the public, municipal and educational channels required to be made available by the provisions of this article.
 5. Schedule of charges: A statement of the applicant's proposed schedule of charges as set forth herein.
 6. Corporate organization: A statement detailing the corporate 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.
 7. 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 three (3%) per cent or more of applicant's outstanding stock.
 8. Intra-company relationships: A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies.
 9. Agreements and understandings: A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of proposal submittal.
 10. Financial statement: If applicant is a corporation, audited financial statements for the two (2) previous fiscal years. If applicant is a partnership, copies of the U.S. Partnership Return of Income (IRS Form 1065) for the two (2) previous fiscal years. If the applicant is a sole proprietorship, copies of the U.S. Individual Income Tax Return (IRS Form 1040) for the two (2) previous fiscal years.
 11. Financial projection: A ten-year operations pro forma which shall include the initial and continuous 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 article, but shall be separately identified in the pro forma.
 12. Financial support: Suitable written evidence from a recognized financing institution, addressed to both the applicant and to the City, advising that the applicant's financial ability and planned operation have been analyzed by the institution, and that the financing institution is prepared to make the required funds available to applicant if it is awarded a franchise.
 13. Construction timetable: A description of system construction including the timetable for provision and extension of service to different parts of the City.
 14. 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.
 15. Technical statement: A statement from the applicant's senior technical staff member or consultant advising that he/she has reviewed the network description, the network technical standards, performance measurements, channels to be provided, service standards, construction standards and conditions of street occupancy as set forth in or required by this ordinance, and that the applicant's planned network and operations will meet all said requirements.

16. Existing franchises: A statement of existing franchises held by the applicant including when the franchises were issued and when the systems were constructed and the present state(s) of the system(s) in each respective governmental unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.
17. Convictions: A statement as to whether the applicant or any of its officers or directors or holders of three (3) per cent or more of its voting stock has in the past ten (10) years been convicted of or has charges pending for any crime other than a simple misdemeanor traffic offense, and the disposition of such case.
18. 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.
19. Franchise renewal information: Subject to Section 626 of the Cable Act, if an application is for renewal of a franchise, the proposal must include, in addition to the information required in subsections (1) through (18) above:
 - a. A summary of the technical, financial and programming history of the network since the granting of the original franchise.
 - b. A statement and timetable that outlines all proposed changes, expansion or improvements in the system as to services, programming or technical specifications during the forthcoming three-year review period.
- C. *Special interests*: In order to maximize the potential of the cable television system, comparative evaluations of applications will reflect the City's special interest in the following areas:
 1. Programming and production assistance: A proposal for funding facilities, equipment or personnel beyond those required elsewhere to be designated to effect and promote public, educational, and government access, and community programming development.
 2. Discrete carriage capacity: A proposal for the origination, experimental uses and/or interconnection by or of agencies specified in Section 12-4-17 for specialized needs and a plan accommodating such future needs as may arise.
 3. Bi-directional capacity: A proposal for effectuating the cable television system's bi-directional capacity and integration of the City's interactive system.
 4. Multi-origination: A proposal for system construction in such a way that it is possible to allow occasional simultaneous cablecasting of different programs on the same channel to different parts of the City.
 5. University of Iowa: A proposal for interconnecting the City's cable television system with a University of Iowa cable network as specified by the university so that residents of the City will benefit from the university's resources.
 6. Converters: A proposal for inclusion of converters or other subscriber technology as part of the basic service.
 7. Institutional network: A proposal to provide bi-directional interconnection of video, voice, audio and data among public sector locations and interconnect to the subscriber network.
 8. Home interactive: A proposal to provide two-way services to subscribers' homes.
- D. *Additional requirements*: The application for franchise shall respond specifically, and in sequence, to the RFP. Twenty (20) copies of the application shall be supplied to the City. The City may, at its discretion, consider such additional information as part of the application.
- E. *Supplementation to applications*: The City reserves the right to require such supplementary, additional or other information as the City deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the City.

Sec. 12-4-10: Acceptance and effective date of franchise.

- A. *Franchise acceptance procedures*: Any franchise awarded hereunder and the rights, privileges and authority granted thereby shall take effect and be in force from and after the sixtieth (60th) day following the award thereof, provided that within sixty (60) days following award from the effective date the Grantee shall file with the City the following:
 1. A notarized statement by the Grantee of unconditional acceptance of the franchise, and
 2. A certificate of insurance as set forth in Section 12-4-14, and
 3. A letter of credit as set forth in Section 12-4-15 herein, and
 4. Reimbursement to the City for the costs of publication of this article, and cost of the initial franchising process, and
 5. Written notification of the Grantee's location and address for mail and official notifications from the City.
- B. *Forfeiture of proposal bond*: Should the Grantee fail to comply with subsection (A) above, it shall acquire no rights, privileges or authority under this article 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 City as liquidated damages.
- C. *Grantee to have no recourse*: The Grantee shall have no monetary recourse whatsoever against the City for any

loss, cost, expense or damage arising out of any provision or requirement of this article or its regulation or from the City's lawful exercise of its authority to grant additional franchises hereunder. This shall not include negligent acts of the City, its agents or employees.

- D. *Acceptance of power and authority of City:* The Grantee expressly acknowledges that in accepting any franchise awarded hereunder, it has relied upon its own investigation and understanding of the power and authority of the City to grant this franchise.
- E. *Inducements not offered:* The Grantee, by accepting 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 on behalf of the City concerning any term or condition of this franchise that is not included in this article.

Sec. 12-4-11: Termination of franchise.

- A. *Grounds for revocation:* The City reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:
 - 1. If the Grantee should default in the performance of any of its material obligations under this article or the franchise and fails to cure the default within sixty (60) days after receipt of written notice of the default from the City, or such longer time as specified by the City.
 - 2. If the Grantee should fail to provide or maintain in full force and effect the construction bond, letter of credit and liability and indemnification coverages as required in this article.
 - 3. 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.
 - 4. If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of the Grantee's assets.
 - 5. If the Grantee makes an assignment for the benefit of creditors.
 - 6. 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.
 - 7. If the Grantee evades any of the provisions of this ordinance or the franchise.
 - 8. If the Grantee practices any fraud or deceit upon the City or cable subscribers.
 - 9. Subject to Sections 12-4-19 and 12-4-20, if the Grantee's construction schedule is delayed later than the schedule contained in the franchise or beyond any extended date set by the City.
 - 10. If the Grantee materially misrepresents facts in the application for a franchise.
 - 11. If the Grantee ceases to provide services over the cable communications system for seven (7) consecutive days for any reason within the control of the Grantee.
 - 12. If the Grantee fails to comply with any material access provisions of this ordinance or the franchise.
- B. *Procedure prior to revocation:* Upon the occurrence of any of the events enumerated in subsections (A) (1), (2), (11), (12), and (13) of this section, the City Council may, after hearing, upon thirty (30) days' written notice to the Grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the Grantee must remedy the cause. If, during the thirty-day period, the cause shall be cured to the satisfaction of the City, the City may declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified, the Council may revoke the franchise. In any event, before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the City Council.
- C. *Effect of pending litigation:* Unless a stay is issued by a Court of appropriate jurisdiction, pending litigation or any appeal to any regulatory body or court having jurisdiction over the Grantee shall not excuse the Grantee from the performance of its obligations under this ordinance or the franchise. Failure of the Grantee to perform material obligations because of pending litigation or petition may result in forfeiture or revocation pursuant to the provisions of this section.
- D. *Purchase of system by City:* If a renewal of a franchise held by a Grantee is denied and the City acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be:
 - 1. At fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself, or
 - 2. In the case of any franchise existing on the effective date of this title, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.
 - 3. If a franchise held by the Grantee is revoked for cause and the City acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at an equitable price.
- E. *Restoration of public and private property:* In removing its plants, structures and equipment, the Grantee shall refill at its own expense any excavation made by it and shall leave all public ways and places and private

property in as good condition as existed prior to the Grantee's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance, indemnity, the performance bond and security fund provided in this article shall continue in full force and effect during the period of removal.

- F. *Restoration by City, reimbursement of costs:* If the Grantee fails to complete any work required by subsection (D) above or any work required by other law or ordinance within the time established and to the satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the costs thereof within thirty (30) days after receipt of an itemized list of such costs, or the City may recover such costs as provided in this article.
- G. *Lesser sanctions:* Nothing shall prohibit the City from imposing lesser sanctions or censures than revocation.
- H. *Expiration; extended operation:* Upon the expiration of a franchise, the City may, by resolution, on its own motion or request of the Grantee, require the Grantee to operate the franchise for an extended period of time not to exceed six (6) months from the date of any such resolution under the same terms and conditions as specified in this ordinance and the franchise. All provisions shall continue to apply to operations during an extension period. The City shall serve written notice at the Grantee's business office of intent to extend under this section at least thirty (30) days prior to expiration of the original franchise or any extensions thereof.

Sec. 12-4-12: Reports and records of the Grantee.

- A. *Annual financial reports required:* The Grantee shall file annually with the City Clerk not later than three (3) months after the end of its fiscal year during which it accepted a franchise hereunder and within four (4) months after the end of each subsequent fiscal year, two (2) copies of:
 - 1. The report to its stockholders; and
 - 2. An annual, fully-audited and certified revenue statement from the previous calendar year for the Iowa City system, including subscriber revenue from each category of service and every source of non-subscriber revenue.
- B. *Annual facilities report required:* Within thirty (30) days of a request by the City, the Grantee shall file annually with the City Clerk two (2) copies of a total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year and a strand map showing the location of same.
- C. *Annual service record report required:* The Grantee shall make available to the City for its inspection at the Grantee's office, a list of all trouble complaints and network downtime received or experienced during the fiscal year. All such submitted data shall also include complaint disposition and response time.
- D. *Annual measurements report required:* The Grantee shall within thirty (30) days of a request by the City, provide two (2) copies of a report on the network's technical measurements, as set forth herein.
- E. *Tests required by City:* Technical tests required by City as specified in this ordinance and the franchise shall be submitted within fourteen (14) days of notification.
- F. *Annual operations reports required:* The Grantee shall file annually with the City Clerk not later than three (3) months after the end of its fiscal year during which it accepted a franchise hereunder and within four (4) months after the end of each subsequent fiscal year two (2) copies of the following supplemental information:
 - 1. If a nonpublic corporation, a list of all current shareholders and bondholders both of record or beneficial. If a public corporation, a list of all shareholders who individually or as a concerted group hold five (5) per cent or more of the voting stock of the corporation.
 - 2. A current list of all Grantee's officers and directors including addresses and telephone numbers.
 - 3. The names of both business and residential addresses and phone numbers of the cable television system resident manager and engineer.
 - 4. Two (2) copies of all types of subscriber agreements. Copies of individual subscribers' agreements are not to be filed with the City.
 - 5. Copies of all rules and regulations promulgated by the Grantee during the fiscal year in the conduct of its business in accordance with the provisions of this ordinance.
 - 6. A copy of the annual report(s) of the parent firm(s) which own an interest of more than three (3) per cent or more of the voting stock of the Grantee; and such other annual report(s) of subsidiaries or divisions of the parent firm(s) as the City deems necessary for the enforcement of this ordinance and the franchise.
- G. *Annual subscriber notification:* Copies of all annual subscriber notifications required by the Federal Communications Commission.
- H. *Application for certificate of compliance:* The Grantee shall give formal notice to the City that it is seeking a certificate of compliance from the Federal Communications Commission. Within five (5) calendar days upon filing such a request with the Federal Communications Commission, the Grantee shall file two (2) copies of its application for certification with the City Clerk.
- I. *Public availability of reports:* Such documents and reports as required under this article must be available to

the public in the office of the City Clerk, during normal business hours. Subscribers shall be notified of the availability of such reports in ways approved by the Iowa City Telecommunications Commission.

- J. *Correspondence*: The Grantee shall, upon request of the City, file with the City Clerk a copy of each petition, application and communications transmitted by the Grantee to, or received by the Grantee from, any federal, state or other regulatory commissions or agencies having competent jurisdiction to regulate and pertaining to the operations of any cable television system authorized hereunder.
- K. *City's access to records*:
1. The City reserves the right during the life of any franchise granted hereunder to have access, necessary for the enforcement of the ordinance and the franchise, at all normal business hours and, upon the giving of reasonable notice, to all of the Grantee's books, necessary for the enforcement of contracts, engineering plans, income tax returns, accounting reports, financial statements and service records and other like materials relating to the property and the operation under the franchise, and to all other records required to be kept hereunder. Nothing contained herein shall prevent the Grantee from enjoining the City from reviewing documents relating to proprietary interests not related to its operation under this article in the City's regulatory program.
 2. Additional reports. The Grantee shall prepare and furnish to the City at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the City in connection with this ordinance or the franchise.
 3. The Grantee acknowledges that the reports, books and records which must be prepared and furnished to the City in connection with this ordinance or a franchise granted under the ordinance may constitute public records under state law and the Grantee may be required to permit examination and copying of such records upon request. If the City receives a demand from any person for disclosure of any information, which the Grantee has designated as confidential, the City shall immediately advise the Grantee of the request and provide the Grantee with a copy of any written request.
- L. *Proof of bonds and insurance*: Grantee shall submit to the City the required bond, or a certified copy thereof and all certificates of insurance required by this ordinance.

Sec. 12-4-13: Franchise payment.

- A. *Filing fee*: Applicants for an initial franchise hereunder shall pay a nonrefundable filing fee to the City of ten thousand dollars (\$10,000.00) which sum shall be due and payable at the time of submission of the application.
- B. *Franchising compensation*: Grantees of a franchise hereunder shall provide an initial payment to the City in an amount equal to the direct costs of granting the initial franchise including but not limited to consultants fees, which sum shall be due and payable concurrently with the Grantee's acceptance of the franchise, to offset the City's costs in the franchise awarding process.
- C. *Annual franchise payment*: Grantees of a franchise hereunder shall pay to the City an annual fee in an amount equal to five (5) per cent of the annual gross revenues, as defined herein, in lieu of all other City's permits and fees, to be utilized by the City to offset its cable television related regulatory and administrative costs and to maximize awareness and use of the public, education, and governmental access and institutional network capacity. If the maximum franchise fee allowed by law is greater than five (5) percent, the City may require the higher amount. The franchise payment shall be in addition to any other payment owed to the City by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes. The City shall provide the Grantee written notice forty-five (45) days prior to collection of an increased franchise fee.
- D. *Method of computation; interest*:
1. Sales taxes or other taxes levied directly on a per subscription basis and collected by the Grantee shall be deducted from the local annual gross revenues before computation of sums due the City is made. Payments due the City under the provisions of subsection C. above shall be computed quarterly as of March 31, June 30, September 30 and December 31 for the respective quarters of each year ending on said dates and shall be paid quarterly within three (3) months after each respective computation date at the office of the City Clerk during the City Clerk's regular business hours. The payment period shall commence as of the effective date of the franchise. The City shall be furnished a statement with each payment, by the Grantee's Division Controller, reflecting the total amounts of gross revenue and the above charges, deductions and computations, for the quarterly payment period covered by the payment.
 2. In the event that any payment is not made as required, interest on the amount due, as determined from the annual gross revenues as computed by a certified public accountant shall accrue from the date of the required submittal at an annual rate of twelve (12) per cent. The percentages designated in this section may be amended no more than once each year by the City Council, consistent with increased costs for municipal facilities and supervision and applicable rules of other regulatory agencies.

E. *Rights of recomputation:* No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this article or for the performance of any other obligation of the Grantee. All amounts paid shall be subject to audit and recomputation by the City.

Sec. 12-4-14: Liability and indemnification.

A. *Indemnification of franchise:* It shall be expressly understood and agreed by and between the City and any Grantee hereunder that the Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand which the City may legally be required to pay as a result of the enactment of this article and the award of a franchise to Grantee, except as such suit, judgment, execution, claim or demand may arise from the process or action of selection of a Grantee or Grantees for award of a franchise as provided herein.

B. *Indemnification of City in franchise operation:* It shall be expressly understood and agreed by and between the City and any Grantee hereunder that the Grantee shall save the City and its agents and employees harmless from and against all claims, damages, losses and expenses, including attorney's fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of the installation, operation or maintenance of the cable television system by the Grantee, its employees or agents, as authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this article and any franchise granted hereunder. This provision shall not apply to acts of the City, its agents or employees.

C. *Reimbursement of costs:* The Grantee shall pay and by its acceptance of any franchise granted hereunder agrees that it will pay all expenses and costs incurred by the City in defending the City with regard to all damages and penalties mentioned in subsections (a) and (b) above except as such expenses may arise from the process (as above). Should the City decide to hire its own defense, such expenses will be borne by the City.

D. *Public liability insurance:* The Grantee shall maintain and by its acceptance of any franchise granted hereunder agrees that it will maintain throughout the term of the franchise, any extensions thereto or as required in this ordinance, a general comprehensive liability insurance policy naming as the additional insured the City, its officers, boards, commissions, agents and employees, in a company registered in the State of Iowa, and which maintains a BEST's rating of A- or better, in forms satisfactory to the City Manager, protecting the City and all persons against liability for loss or damage, occasioned by the operations of Grantee under any franchise granted hereunder, in the amounts of:

1. Two million (\$2,000,000.00) for bodily injury or death to any one person, within the limit, however, of three million dollars (\$3,000,000.00) for bodily injury or death resulting from any one accident, and
2. One million (\$1,000,000.00) for property damage resulting from any one accident.

E. *Automobile liability insurance:* The Grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:

1. \$1,000,000 for bodily injury and consequent death per occurrence;
2. \$1,000,000 for bodily injury and consequent death to any one person; and
3. \$500,000 for property damage per occurrence.

F. *Insured:* At any time during the term of the franchise, the City may request and the Grantee shall comply with such request, to name the City as an additional insured for all insurance policies written under the provisions of this ordinance or the franchise.

G. *Inflation:* To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits, and amounts of the insurance provided for herein are subject to reasonable increases at the end of every three (3) year period of the franchise, applicable to the next three year period, at the sole discretion of the City, upon a finding by the City of increased insurance risks requiring such changed limits.

H. *Notice of cancellation or reduction of coverage:* The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this article and shall contain the following endorsement:

This policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the City Manager of a written notice of such intent to cancel or reduce the coverage.

I. *Evidence of insurance filed with City Manager:* All certificates of insurance shall be filed and maintained with the City Manager during the term of any franchise granted hereunder or any renewal thereof.

J. *Extent of liability:* Neither the provisions of this article nor any insurance accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under any franchise issued hereunder or for damages, either to the full amount of the bond or otherwise.

K. *Insurance for contractor and subcontractors:* Grantee shall provide coverage for any contractor or subcontractor involved in the construction, installation, maintenance or operation of its cable communications system by

either obtaining the necessary endorsements to its insurance policies or requiring such contractor or subcontractor to obtain appropriate insurance coverage consistent with this section and appropriate to the extent of its involvement in the construction, installation, maintenance or operation of Grantee's cable communications system.

Sec. 12-4-15: Bonds.

- A. *Proposal bond:* Each applicant for an initial franchise hereunder shall submit a proposal bond in a form acceptable to the City Manager or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the City in an amount of twenty-five thousand dollars (\$25,000.00). Said bond shall remain in effect until such time as the applicant accepts the franchise and furnishes both the construction bond and the letter of credit as provided herein.
- B. *Construction bond:* The Grantee shall maintain and by its acceptance of any franchise granted hereunder agrees that it will maintain through the rebuild or construction of the cable television system as required by this ordinance, a faithful construction bond running to the City, with at least (2) good and sufficient sureties or other financial guaranties approved by the City Manager, in the penal sum total of one million dollars (\$1,000,000.00) conditioned upon the faithful performance of the Grantee in the construction or rebuild of a cable television system complying with related provisions of this ordinance and the franchise, and upon the further condition that if the Grantee shall fail to comply with any law, ordinance or regulation governing the construction or rebuild of the cable television system, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of repair, construction, 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. In addition, failure to meet construction deadlines shall result in forfeiture of said bond or withdrawal from the construction bond. The bond shall contain the following endorsement: This policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the City Manager of a written notice of such intent to cancel or reduce the coverage.
- C. *Release of the bond:* Upon the City's determination that the construction or rebuild of a cable television system is complete, the Grantee shall be notified by the City that the bond required under this section shall be released.
- D. *Letter of credit:*
1. The Grantee shall obtain, maintain, and file with the City an irrevocable letter of credit from a financial institution acceptable to the City and licensed to do business in the State in an amount of seventy-five thousand (\$75,000.00), naming the City as beneficiary for the faithful performance by it of all the provisions of this franchise and compliance with all orders, permits and directions of any agency of the City having jurisdiction over its acts or defaults under this contract and the payment by the Grantee of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system. The letter of credit shall be released only upon expiration of the franchise or upon the replacement of the letter of credit by a successor Grantee.
 2. Within thirty (30) days after notice to it that any amount has been withdrawn from the letter of credit pursuant to subsection D.1. of this section, the Grantee shall pay to, or deposit with, the City Clerk a sum of money or securities sufficient to restore such security fund to the original amount of seventy-five thousand dollars (\$75,000.00) up to a total during the franchise term of \$500,000.
 3. If the Grantee fails to pay to the City any compensation required pursuant to this article within the time fixed herein; or, fails, after ten (10) days' notice to pay to the City any taxes due and unpaid; or, fails to repay to the City, within such ten (10) days, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this franchise; notice of such failure by the office of the City Manager, to comply with any provisions of this contract which the office of the City Manager reasonably determines can be remedied by an expenditure of the letter of credit, 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 Grantee of the amount and date thereof.
 4. If the Grantee wishes to contest withdrawal, the Grantee may petition to the Iowa City Telecommunications Commission for a hearing within ten (10) days from date notice of withdrawal is mailed or otherwise given.
- E. *Replenishment of letter of credit and construction bond:* No later than thirty (30) days, after mailing to the Grantee by certified mail notification of a withdrawal pursuant to paragraphs C and D above, and after the total amount of funds in the letter of credit is \$50,000, the Grantee shall replenish the letter of credit or construction bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the letter of credit and construction bond shall constitute a violation of this Ordinance.

Sec. 12-4-16: Fees, rates and charges.

- A. *Schedule filings:* Subject to Federal law, Grantee shall file with the City schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto. No rates or charges shall be effective except as they appear on a schedule so filed. Grantee shall notify the City and subscribers in writing at least thirty (30) days prior to the implementation of any change in services offered, rates charges, or terms and conditions related thereto.
- B. *Nondiscriminatory rates:* Unless otherwise allowed by FCC regulation, Grantee shall establish rates that are nondiscriminatory within the same general class of subscribers which must be applied fairly and uniformly to all subscribers in the franchise area for all services. Nothing contained herein shall prohibit the Grantee from offering (i) discounts to commercial and multiple family dwelling subscribers billed on a bulk basis; (ii) promotional discounts; (iii) reduced installation rates for subscribers who have multiple services; or (iv) discount for senior citizens and/or low income residents. Grantee's charges and rates for all services shall be itemized on subscriber's monthly bills.
- C. *City regulation:* To the extent that federal or state law or regulation may now, or as the same may hereafter be amended to, authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City.
- D. *Rate regulation of the basic tier and charges:* The City will follow FCC Rate Regulations. In connection with such regulation, the City will ensure a reasonable opportunity for consideration of the views of interested parties; and the City Attorney, or designee, is authorized to execute on behalf of the City and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations.
- E. *Ability to petition:* If applicable, the City shall have the right to petition the Federal Communications Commission or other appropriate agency or organization to obtain rate regulation authority or to petition the federal body to review or regulate rates in the City.
- F. *Notification of charges:* The Grantee may establish charges for its services not specified in subsection (a) above; however, all such charges, including but not limited to additional service, leased channel, discrete channel, and production rates shall be made public and two (2) copies of the schedule of charges, as originally and thereafter modified, shall be filed with the City Clerk thirty (30) days prior to the effective date of such changes.
- G. *Deposits on advance payments to be approved:* The Grantee shall receive no deposit, advance payment or penalty from any subscriber or potential subscriber other than those established in the schedule of charges previously filed with and/or approved by the City Council.
- H. *Purchase of switch:* In the event that the FCC does not regulate antenna switches, and/or that a switch or other appurtenant device is required to permit subscribers to receive full broadcast network service, the Grantee shall give the subscriber the option of purchasing the switch at a reasonable cost at the time of initial installation thereof, or of purchasing said switch or other appurtenant device at the then prevailing local installment plan interest rate. The Grantee hereby agrees to allow the subscriber to provide a switch or other appurtenant device at its subscriber terminal, provided that such device meets with the approval of the Grantee. Such approval shall not be withheld if it is shown that such device does not interfere with the operation of the cable television system. If the subscriber elects not to purchase or provide said switch or other appurtenant device, the Grantee may make an additional charge for the rental of such switch or other appurtenant device providing that the additional charge is in accordance with the schedule of charges contained in the Grantee's application for a franchise hereunder or hereafter shall be filed with and approved by the City.
- I. *Subscriber refunds in addition to those authorized by the FCC:*
 - 1. If any subscriber of the Grantee of less than ten (10) days terminates services due to the Grantee's failure to render service to such subscriber of a type and technical quality provided for herein;
 - 2. If service to a subscriber is terminated by the Grantee without good cause; or
 - 3. If the Grantee ceases to provide service for twenty-four hours or more, the cable television system authorized herein for any reason except termination or expiration of a franchise granted hereunder;The Grantee shall refund to such subscriber an amount equal to the monthly charge, installation and connection charge paid by such subscriber in accordance with the then-existing schedule of charges.
- J. *Disconnection:* Except as provided by FCC rate regulation, there shall be no charge for disconnection of any installation or outlet. If any subscriber fails to pay a properly due monthly subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the subscriber's service outlet. Such disconnection shall not be effected until forty-five (45) days after the due date of said delinquent fee or charge, and after adequate written notice of the intent to disconnect has been delivered to the subscriber in question. Upon payment of charges due and the payment of a reconnection charge, if any, the Grantee shall promptly reinstate the subscriber's cable service after request by subscriber.

- K. *Rates subject to other regulations:* The Grantee in submitting its request for approval of initial rates or any subsequent rates shall do so for basic service and related equipment to be performed to or for subscribers described in this ordinance. If FCC rules and regulations, or any other applicable laws or regulations, shall subsequently determine that the City of Iowa City has jurisdiction over other services or service to be offered or performed, said rates shall be subject to approval by the City at that time.
- L. *Reduction of fees:* If during the term of any franchise or renewal thereof granted hereunder, the Grantee receives refunds or if the cost of operation to the Grantee is reduced as a result of an order of any regulatory body having competent jurisdiction, the Grantee shall pass on to its subscribers on a prorated basis any such savings or reduced costs pursuant to FCC regulation.
- M. *Rate change procedures:*
1. *Limitation on application for increase in rates:* The Grantee shall not, unless allowed by FCC regulations, file more than one application for an increase in fees, rates or charges during any calendar year except to seek relief from the imposition of federal, state or local taxes or other legally imposed fees not contemplated in the most recent rate determination.
 2. *Review of rates:* The Iowa City Telecommunications Commission shall review the Grantee's schedule of fees, rates or charges that are within the City's regulatory jurisdiction, upon application by the Grantee as herein provided or at any time on its own motion. The Iowa City Telecommunications Commission shall submit such schedule and any contemplated modifications thereof, together with its recommendations, to the City Council as expressed in such a resolution. The City Council may, pursuant to FCC regulations, reduce or increase such fees, rates or charges adopted for this purpose and, unless allowed by FCC regulation, no change in the Grantee's schedule of fees, rates or charges shall be effective without prior action of the Iowa City Telecommunications Commission and the approval of the Council. No such resolution shall be adopted without prior public notice and opportunity for all interested members of the public, including the Grantee, to be heard, subject to the procedures set forth in this ordinance. No change in City regulated fees, rates and charges shall take effect until thirty (30) days after the approval of the rates by the City Council.
 3. *Documentation of request for increase:* Any increase requests, in addition to other factors described in this section, shall be supported by a showing of increased costs for the existing services or proposed services and shall be filed in two (2) copies with the City Clerk. If a Grantee requests a change, it shall present in detail in writing the statistical basis, in addition to other requirements as set out in this section, for the proposed fee change in accordance with FCC rules.
 4. *Records to be made available:* For the purposes of determining the reasonableness of Grantee fees, rates or charges, Grantee records relating the same shall be made available to the City.

Sec. 12-4-17: Public, education and government connection to cable television system.

The Grantee shall provide upon request within the City one connection and monthly service for basic service and all non-pay services to such public, parochial and nonprofit private schools, the University of Iowa, City designated public access facility, City and other government buildings and other agencies, provided that such designated locations are within two hundred (200) feet of any network cable route. Initial installation shall be without charge. Rates for monthly service to residential or living units within such entities may be negotiated with each such entity. The Grantee may charge for any excess footage on the basis of time and material for any such locations beyond the two hundred-foot limitation if such connection is designated by the City. The City reserves the right for itself and the above entities at their individual expense to extend service to as many areas within such schools, buildings and agencies as it deems desirable without payment of any additional installation fee or monthly fee to Grantee. All such extensions, however, shall be accomplished in such a way so as not to interfere with the operation of the cable television system. Institutions receiving free drops will consult with Grantee on the technical standards to be used for such extensions. The Grantee shall comply with the public, educational and government access requirements specified in the franchise.

Sec. 12-4-18: Interconnection of network.

Area interconnection: The Grantee shall be interconnected with other communities and cable companies as specified in the franchise.

Sec. 12-4-19: Construction timetable for initial construction.

- A. *Permit application:* It is hereby deemed in the public interest that the system be extended as rapidly as possible to all residents within the City. Within ninety (90) days of the effective date of a franchise granted hereunder, the Grantee shall file with the appropriate authorities and utilities all initial papers and applications necessary to comply with the terms of this article including the application for franchise and any additions or amendments thereto and shall thereafter diligently pursue all such applications. After the Grantee has diligently pursued the acquisition of necessary pole attachment contracts, or other necessary easements, and where such necessary contracts have not been executed or easements obtained after a reasonable period of time as determined by

- the City, the City may, at its discretion, provide assistance to ensure the extension of the system to all residents.
- B. *Commencement of construction:* Within one hundred eighty (180) days of the effective date of FCC certification, the Grantee shall initiate construction and installation of the cable television system. Such construction and installation shall be pursued with reasonable diligence.
 - C. *Commencement of operation:* Within twelve (12) months of the effective date of FCC certification, the Grantee shall commence operation within the meaning set forth in this ordinance.
 - D. *Sustained completion of construction:* Within the time specified in the franchise agreement, the Grantee shall have substantially completed construction of the service area within the meaning set forth in this ordinance.
 - E. *Provisions of basic service:* Within the time specified in the franchise agreement, the Grantee shall have placed in use sufficient distribution facilities so as to offer basic service to one hundred (100) per cent of the dwelling units in the service area to which access is legally and reasonably available.
 - F. *Delays and extension of time:* The City Council may in its discretion extend the time for the Grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused, as the case may be, for any period during which the Grantee demonstrates to the satisfaction of the City Council that the Grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond its control:
 - 1. necessary utility rearrangements, pole change-outs or obtaining of easement rights,
 - 2. governmental or regulatory restrictions,
 - 3. labor strikes,
 - 4. lockouts,
 - 5. war,
 - 6. national emergencies,
 - 7. fire,
 - 8. acts of God.
 - G. *When certain operations are to commence:* If FCC certification is not required for a franchise granted under this article, all time periods specified in subsections (A), (C), (D) and (E) of this section shall commence with the effective date of a franchise granted hereunder.

Sec. 12-4-20: Construction timetable for rebuild construction.

- A. *Compliance with construction and technical standards:* Grantee shall construct, rebuild, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards or guidelines, governmental requirements, FCC technical standards, and detailed technical standards provided for in the franchise.
- B. *Construction timetable:* The Grantee shall construct and complete the system rebuild in accordance with the timetable set forth in the franchise.
- C. *Delays and extension of time:* The City Council may in its discretion extend the time for the Grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused, as the case may be, for any period during which the Grantee demonstrates to the satisfaction of the City Council that the Grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond its control:
 - 1. necessary utility rearrangements, pole change-outs or obtainment of easement rights,
 - 2. governmental or regulatory restrictions,
 - 3. labor strikes,
 - 4. lockouts,
 - 5. war,
 - 6. national emergencies,
 - 7. fire,
 - 8. acts of God.

Sec. 12-4-21: Network description.

- A. *System bandwidth capability:* The Grantee shall install a cable network according to the following specifications: The initial system shall be designed to a capacity equivalent to a minimum of 750 MHz and as specified in the franchise. The Grantee at its option may provide for this increased capacity at the time of initial construction.

As total bi-directional capacity is a priority goal of the City, applicants for a franchise hereunder may propose greater channel capacities and more sophisticated two-way capabilities than the minimums set forth herein. However, such proposal shall describe the particular community needs to be served thereby and shall detail, as part of the financial projection and support required in this ordinance the associated costs and revenues.
- B. *System configuration:* The Grantee shall design and construct the network using fiber to the node architecture, or better, in such a way as to provide maximum flexibility and to provide service to the fewest number of homes

per fiber node as economically feasible.

- C. *Protection of subscriber privacy mandatory:* Grantee shall at all times protect the privacy of subscribers, as provided in this ordinance and other applicable federal, state, and local laws.
- D. *Notice of privacy provisions:* At the time of entering into an agreement to provide any cable service or other service to a subscriber, and at least once a year thereafter, Grantee shall provide notice consistent with and in accordance with federal law in the form of a separate written statement to each subscriber which clearly and conspicuously informs the subscriber of:
 - 1. The privacy rights of the subscriber and the limitations placed upon Grantee with regard this ordinance hereof and all other applicable federal, state, and local subscriber privacy provisions;
 - 2. The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;
 - 3. The nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;
 - 4. The period during which such information might be maintained by the cable operator;
 - 5. The times and place at which the subscriber may have access to such information in accordance with this ordinance and other applicable federal, state, and local law;
 - 6. A request for the subscriber signature allows for use of personally identifiable information.
- E. *Collection of personally identifiable information prohibited:* Grantee shall not use or permit the use of the cable system to collect personally identifiable information concerning any subscriber, except as necessary to render a cable service or other service provided by the cable operator to the subscriber. Grantee shall not install or permit the installation of any special terminal equipment in any subscriber's premises for the two-way transmission of any aural, visual, or digital signals without the prior written consent of the subscriber. Grantee shall not tabulate, nor permit others to tabulate, any subscriber use of the cable system which would reveal the opinions or commercial product preferences of individual subscribers, whether residential or business, or of any occupant or user of the subscriber's premises without written authorization from the subscriber for his or her participation in a shop-at-home or similar service. When providing such service, the Grantee may tabulate only those responses essential to the functioning of that shopping or other service, and may not use any such tabulation of individual preferences for any other purposes. Tabulations of aggregate opinion or preference are permitted, provided the aggregations are sufficiently large to assure individual privacy.
- F. *Disclosure of subscriber information prohibited:* Grantee shall not without the specific written authorization of the individual subscribers involved, sell or otherwise make available to any party any list of the names and addresses of individual subscribers, any list which identifies the viewing habits of individual subscribers, or any personal data, social security number, income and other data the Grantee may have on file about individual subscribers, except as necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the cable operator to the subscriber, provided, however, that such disclosure shall not reveal directly or indirectly the extent of viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or the nature of any transaction made by the subscriber over the cable system.
- G. *Notices of monitoring:* Grantee shall report to the affected parties, the City and other appropriate authorities, any instances of monitoring or tapping of the system, or any part thereof, of which it has knowledge, which is not authorized under this section whether or not such activity has been authorized by Grantee. Grantee shall not record or retain any information transmitted between a subscriber or user and any third party, except as required for lawful business purposes. Grantee shall destroy all subscriber or user information of a personally identifiable nature after a reasonable period of time, unless retention of such information is authorized by the affected subscriber or user.
- H. *Polling by cable:* No poll or other upstream response from a subscriber shall be conducted or obtained except as part of a program that contains an explicit disclosure of the nature, purpose and prospective use of the results of the poll or upstream response and where the program has an informational, entertainment or educational function which is self-evident. Grantee or its agents shall release the results of upstream responses only in the aggregate and without individual references.
- I. *Monitoring devices:* Grantee shall provide written notice to each subscriber when equipment is to be installed on the system which would permit the recording or monitoring of individual viewing habits of a subscriber or household; such equipment shall be installed only after prior written permission has been granted by the subscriber. Such permission may be valid for one year only and may be renewed by permission of the subscriber. In no event shall such permission be obtained as a condition of service or continuation thereof. Grantee shall give each subscriber annual written notice of any such monitoring and of the subscriber's right to terminate the monitoring in accordance with the terms and conditions of the subscriber's contract with Grantee.
- J. *Personally identifiable information:* Grantee shall not predicate regular subscriber service on the subscriber's grant or denial of permission to collect, maintain or disclose personally identifiable information. A subscriber

may at any time revoke any permission previously given by delivering to the Grantee a written statement of that intent.

- K. *Correction policy:* Each subscriber shall be provided access to all personally identifiable information regarding such subscriber that Grantee collects or maintains or allows to be collected or maintained, and such subscriber shall be provided the opportunity to correct any error in such information.
- L. *Viewing habits:* Any information concerning individual subscriber viewing habits or responses, except for information for billing purposes, shall be destroyed within sixty (60) days of collection. Information for billing purposes shall be kept for two (2) years and then destroyed unless otherwise required to be kept by law.
- M. *System performance:* This section is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance.
- N. *Subscriber and user contracts:* This section of this ordinance shall be enforceable directly by every aggrieved subscriber or user and by every aggrieved person seeking to become a subscriber or user. Grantee shall include the following provision in every contract or agreement between Grantee and any subscribers or user:

The subscriber/user, as part of this contract, has certain rights of privacy prohibiting the unauthorized monitoring of service and publication of personal information under the control of (Name of Grantee), including without limitation, information regarding program selections or service uses. (Name of Grantee) shall make available upon the request of the subscriber/user further description of said rights as established in its ordinance and franchise with the City of Iowa City.

Grantee shall not allege or contend that any actual or potential subscriber or user may not enforce this ordinance by reason of lack of privacy.

Sec. 12-4-22: Network technical requirements.

General requirements: Each cable television system must be so designed, installed and operated as to meet FCC technical standards and standards set forth in the franchise.

Sec. 12-4-23: Performance measurements.

- A. *General requirements:* Test procedures utilized shall be in accordance with those promulgated by the FCC and the National Cable Television Association.
- B. *Additional tests and inspection:* The City reserves the right to:
 - 1. Require additional tests for cause at specific terminal locations at expense of the Grantee, and
 - 2. Conduct its own inspections of the cable television system on its own motion at any time during normal business hours with reasonable advance notice.
- C. *Report of measurements combined:* To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory agencies, the City shall accept such combined reports, provided that all standards and measurements herein or hereafter established by the City are satisfied.

Sec. 12-4-24: Construction standards.

- A. *Antennas and towers:* Antenna supporting structures (towers) shall be designated for the proper loading zone as specified in the Electronics Industry Association's Specifications as amended from time to time.
- B. *Compliance with aviation requirements:* Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aeronautical Agency, the state aeronautics board governing the erection and operation of supporting structures or television towers, and all other applicable local or state codes and regulations.
- C. *City approval of construction plans:* Prior to the erection of any towers, poles or conduits or the upgrade or rebuild of the cable communications system under this ordinance, the Grantee shall first submit to the City and other designated parties for review, such information as specified in the franchise. No erection or installation of any tower, pole, underground conduit, or fixture or any rebuilds or upgrading of the cable communications system shall be commenced by any person until approval, therefore, has been received from the City.
- D. *Contractor qualifications:* Any contractor proposed for work of construction, installation, operation, maintenance, and repair of system equipment must be properly licensed under laws of the State, and all local ordinances. In addition, the Grantee shall submit to the City, every two years, a plan to hire persons locally for the construction, installation, operation, maintenance and repair of the system equipment.
- E. *Minimum interference:* The Grantee's system and associated equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. No pole or other fixtures placed in any public ways by the Grantee shall be placed in such a manner as to interfere with normal travel on such public way.
- F. *City maps:* The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.

- G. *Quality of construction:* Construction, installation, operation, and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner, in accordance with then current technological standards. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for aesthetic and engineering considerations.
- H. *Construction standards:* 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 Electrical Code
National Electrical Safety Code (NESC)
National Cable Television Standard Code
AT&T Manual of Construction Procedures (Blue Book)
Bell Telephone Systems Code of Pole Line Construction
All Federal, State and Municipal Construction Requirements, including FCC Rules and Regulations
Utility Construction Requirements
All Building and Zoning Codes, and All Land Use Restrictions, as the same exist or may be amended hereafter.

Sec. 12-4-25: Erection, removal and common use of poles.

- A. *Approval for poles:* No poles shall be erected by the Grantee without prior approval of the City with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall give rise to a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby.
- B. *Requirements to use existing poles:* Where poles already exist for use in serving the City and are available for use by the Grantee, but Grantee does not make arrangements for such use, the City may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

Sec. 12-4-26: Construction reporting requirements.

- A. *Progress reports:* Within thirty (30) days of the granting of a franchise pursuant to this ordinance, the Grantee shall provide the City with a written progress report detailing work completed to date and a schedule for completion of construction. Such report shall include a description of the progress in applying for any necessary agreements, licenses, or certifications and any other information the Cable Television Administrator may deem necessary. The content and format of the report will be determined by the Cable Television Administrator and may be modified at the Administrator's discretion.
- B. *Timeframe for reports:* Such written progress reports shall be submitted to the City on a bimonthly basis throughout the entire construction or rebuild process. The Cable Television Administrator may require more frequent reporting if the Administrator determines it is necessary to better monitor the Grantee's progress.
- C. *Subscriber information:* Prior to the commencement of any major system construction, the Grantee shall produce an informational document to be distributed to all residents of the area to be under construction, which shall describe the activity that will be taking place. The informational document shall be reviewed by the Cable Television Administrator prior to its distribution.

Sec. 12-4-27: Channels to be provided.

- A. *Leased access channel:* The Grantee shall maintain at least one specifically designated channel for leased access uses. In addition, other portions of its nonbroadcast bandwidth, including unused portions of the specifically designated channels, shall be available for leased uses. On at least one of the leased channels, priority shall be given to part-time users.
- B. *Television broadcast signal carriage:* The Grantee shall carry those television broadcast signals which are in accordance with Part 76, Section 76.63 of the FCC Rules and Regulations as such rules are amended from time to time. The provision of additional television broadcast signals as provided for in Part 76, Section 76.63(a) shall also be required as amended from time to time.
- C. *Basic service:* Channels to be included on the first tier of service not requiring a converter or other appurtenance shall include: all television signals described in subsections A., B. and D. of this section. As the maximized use of the total channel capacity is of great interest to the City, applicants for a franchise hereunder may submit proposals to utilize channels beyond the basic service. Such a proposal may include the use of converters at no additional charge to subscribers.
- D. *Access channels:* Grantee shall provide the public, educational and governmental access channels as specified in the franchise. The entities operating access channels shall, in cooperation with the Iowa City Telecommunications Commission, develop rules for such channels. Such rules shall be placed on file with the City Clerk.

Sec. 12-4-28: Conditions of street occupancy:

- A. *Approval of proposed construction:* The Grantee shall first obtain the approval of the City prior to commencing construction on the streets, alleys, public grounds or places of the City as specified in the franchise.
- B. *Permits:* A Grantee shall obtain construction permits in conformance with all City rules and regulations.
- C. *Changes required by public improvements:* The Grantee shall, at its expense, protect, support, temporarily disconnect, or relocate in other public place any property of the Grantee when required by the City by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, City-owned power or signal lines, and tracts or any other type of structure or improvement by public agencies.
- D. *Use of existing poles or conduits:* Nothing in this article or any franchise granted hereunder shall authorize the Grantee to erect and maintain in the City new poles where existing poles are servicing the area. The Grantee shall require permission from the City before erecting any new poles, underground conduit or appurtenances where none exist at the time the Grantee seeks to install its network.
- E. *Underground installation:* All installations shall be underground in those areas of the City where public utilities providing either telephone or electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its service above ground, provided that at such time as those facilities are required to be placed underground by the City or are placed underground, the Grantee shall likewise place its services underground without additional cost to the City or to the individual subscribers so served within the City. Where not otherwise required to be placed underground by this ordinance or the franchise, the Grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable passing under the roadway shall be installed in conduit.
- F. *Pedestals:* When housing mini-hubs, switching or other equipment are to be utilized on the public right of way, such equipment must be completely buried beneath streets or sidewalks. Any pedestals located in the public right of way shall comply with city ordinances or regulations. All such buried equipment shall be shown in plan and cross-section on the design plans for permits.
- G. *Facilities not to be hazardous or interfere:* All wires, conduits, cable and other property and facilities of the Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the City. The Grantee shall keep and maintain all its property in good condition, order and repair. The City reserves the right hereunder to inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in part or in whole, by the Grantee. The Grantee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the City. A Grantee shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners or with any gas, electric or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in a street shall be placed in the right-of-way between the roadway and the property, as specified by the City.
- H. *Method of installation:* All wires, cables, amplifiers, and other property shall be constructed and installed in an orderly manner consistent with the trade. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in a parallel and bundled, with due respect for engineering and safety considerations. All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation. All underground installations of wires and cable shall be buried at least twelve (12) inches below ground, and no trenching or other underground installation shall be commenced without notice to the City Forester. All underground installation shall be performed in compliance with City Forester directions.
- I. *Protection of facilities:* Nothing contained in this section shall relieve any person, company or corporation from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system. Any person, company or corporation intending to perform any of the above-described work in an area where Grantee's facilities are located shall notify Grantee at least twenty-four (24) hours prior to performing said work.
- J. *Requests for removal or change:* The Grantee shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of said building. The expense of such temporary removal, raising or lowering of wires 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 ten (10) work-ing days' notice of any move contemplated to arrange for temporary wire changes.
- K. *Authority to trim trees:* The Grantee may trim trees upon and overhanging streets, alleys, sidewalks and other public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. No trimming shall be done except under the supervision and direction of the City For-

ester, upon the explicit prior written notification and approval of the City Forester and at the expense of the Grantee. The Grantee may contract for such services; however, any firm or individual so retained shall receive City Forester approval prior to commencing such activity.

- L. *Restoration or reimbursement:* In the event of disturbance of any street or private property by the Grantee, it shall, at its own expense and in a manner approved by the City and the owner, replace and restore such street or private property in as good a condition as before the work causing such disturbance was done. In the event the Grantee fails to perform such replacement or restoration, the City or the owner shall have the right to do so as the sole expense of the Grantee. Payment to the City or owner for such replacement or restoration shall be immediate, upon demand, by the Grantee. All requests for replacement or restoring of such streets or private property as may have been disturbed must be in writing to the Grantee.
- M. *Office and records in City:* The Grantee shall at all times make and keep at an office maintained by the Grantee in the City full and complete plans and records showing the exact location of all cable television system equipment installed or in use in the streets or other public places of the City. The Grantee shall furnish the City complete maps upon request, compatible with the City's geographic information system, showing all of the cable television system equipment installed and in place in streets and other public places of the City. Such maps shall be updated annually.
- N. *Emergency removal of plant:* If, at any time, in case of fire or disaster in the City, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cables, amplifiers, appliances or appurtenances thereto of the Grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the Grantee, at its sole expense provided that such repairs are not necessitated by negligent act of the City, in which case, cost for repairs shall be borne by the City.
- O. *Alternate routing of plant:* In the event continued use of a street is denied to the Grantee by the City for any reason, the Grantee will make every reasonable effort to provide service over alternate routes.

Sec. 12-4-29: Unauthorized connections or modifications.

- A. *Unauthorized connections prohibited:* It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency, without the expressed consent of the Grantee, to make any connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of a franchised cable television system for any purpose whatsoever, except as provided in this ordinance.
- B. *Removal or destruction prohibited:* It shall be unlawful for any firm, person, group, company, corporation or government body or agency to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of a franchised cable television system for any purpose whatsoever.

Sec. 12-4-30: Preferential or discriminatory practices prohibited.

- A. *Prohibited employment practices:* The Grantee shall not commit any of the following employment practices and agrees to prohibit the following practices in any contracts or subcontract entered into or effectuate the operation of this franchise.
 - 1. To discharge from employment or refuse to hire any individual because of their race, color, religion, creed, sex, national origin, age, disability, marital status or sexual orientation.
 - 2. To discriminate against any individual in term, conditions or privileges of employment because of their race, color, religion, creed, sex, national origin, age, disability, marital status or sexual orientation.The Grantee shall be an Equal Opportunity/Affirmative Action Employer adhering to all Federal, State or municipal laws and regulations. Pursuant to 47 CFR Sec. 76.311 and other applicable regulations of the FCC, Grantee shall file an Equal Employment Opportunity/Affirmative Action Program with the FCC and otherwise comply with all FCC regulations with respect to Equal Employment/Affirmative Action Opportunities.
- B. *Employment policy:* Grantee shall take affirmative action to employ, during the construction, operation and maintenance of the cable communications system minorities and females as set forth in the franchise. Upon request by the City, Grantee shall submit to the City annual reports indicating such compliance.
- C. *Procurement:* For all services, materials or equipment purchased for the construction, operations or maintenance of the cable communications system, Grantee shall wherever possible, purchase from competitively priced and otherwise qualified minority-owned, or female owned businesses located in the City of Iowa City, as set forth in the franchise.
- D. *Local employment and procurement practices:* Whenever possible, all services, personnel, hardware and supplies for the construction, maintenance and operation of the system shall be procured locally.
- E. *Services to be equally available:* The Grantee shall not refuse cable television services to any person or organization who requests such service for lawful purpose, nor shall a Grantee refuse any person or organization the right to cablecast pursuant to provisions of this article. The Grantee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any unreasonable preference or advantage, not subject any person to any prejudice or disadvantage. The Grantee shall take affirmative steps to

disseminate the information concerning the availability of its services to all minority and other under represented groups. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the system or other legitimate uses thereof, nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classifications shall be entitled, provided such schedules have been filed with and approved by the City as provided in this ordinance.

- F. *Fairness of accessibility:* The entire system of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies or other entities having a legitimate use for the system. No one shall be arbitrarily excluded from its use. Allocation of use of said facilities shall be made according to the rules or decisions of regulatory agencies affecting the same, and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution by the Iowa City Telecommunications Commission.

Sec. 12-4-31: Installations, connections, and other services.

- A. *Standard installations:* Standard installation shall consist of a service not exceeding one hundred fifty (150) feet from a single point or pedestal attachment to the customer's residence. Service in excess of 150 feet and concealed wiring shall be charged at such cost as exceeds normal installation costs. The desire of the Subscriber as to the point of entry into the residence or commercial establishment and location of pedestal shall be observed whenever possible. Runs in building interiors shall be as unobtrusive as possible. The Grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within no more than ten (10) days after the damage is incurred and shall be completed as soon as possible thereafter.
- B. *Deposits:* Any deposit required by Grantee shall bear interest at the current lending rate.
- C. *Lockout devices:* The Grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber. 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.
- D. *Reconnection:* Grantee shall restore service to customers wishing restoration of service provided customer shall first satisfy any previous obligations owed.
- E. *Free disconnection:* Subscribers shall have the right to have cable service disconnected without charge. A refund of unused service charges shall be paid to the customer within sixty (60) days from the date of termination of service.
- F. *Downgrade and upgrade fees:* Any downgrade or upgrade fees shall conform with FCC rules.

Sec. 12-4-32: Service calls and complaint procedures.

- A. *Business office staffing:* Grantee shall provide all subscribers or users with at least thirty (30) days prior written notice of a change in business office hours. The business office shall maintain a staff adequate to process complaints, requests for installation, service or repairs, and other business in a timely and efficient manner. Grantee shall add additional telephone lines and service representatives when existing lines are substantially utilized or when a pattern of subscriber complaints reflect a need for additional service employees. Additional offices and payment stations provided by the Grantee shall be included in the franchise.
- B. *Telephone service:* The Grantee shall have a listed, locally-staffed telephone number for service calls available twenty-four (24) hours a day, seven (7) days a week. Said number shall be made available to subscribers and the general public. The Grantee shall provide an unlisted locally-staffed telephone number to the City and utility companies to enable the City or utility companies to reach the Grantee in case of emergency on a 24-hour, 7-days-a-week basis.
- C. *Grantee rules:* The Grantee shall prepare and file with the City copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. The Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the City office responsible for the administration of the franchise, including, but not limited to, the address and telephone number of said office.
- D. *Equipment service:* The Grantee shall service or replace without charge all equipment provided by it to the subscriber, provided, however, that the Grantee may charge a subscriber for service to or replacement of any equipment damaged due to negligence of such subscriber.
- E. *Subscriber solicitation:* Grantee shall provide the City with a list of names and addresses of all representatives who will be soliciting within the City and the area in and the dates within such solicitations shall take place. Each such representative and all other employees entering upon private property shall be required to wear an

employee identification card issued by Grantee and bearing a picture of said representative. Grantee shall notify the general public of its solicitation in a manner calculated to reach residents in the areas to be solicited in advance of such solicitation.

- F. *Sales information:* Grantee shall provide to all subscribers annually and all prospective subscribers or users with complete written information concerning all services and rates provided by Grantee upon solicitation of service and prior to consummation of any agreement for installation of service. Such sales material shall clearly and conspicuously disclose the price and other information concerning Grantee's least costly service. Such information shall be written in plain English and shall include but shall not be limited to the following: all services, tiers, and rates; deposits if applicable; installation costs; additional television set charges; service upgrade or downgrade charges; lockout devices; and information concerning the utilization of video cassette recorders (VCRs) with cable service(s) and the cost for hooking up such VCRs so that they function as manufactured.
- G. *Billing practices information:* Grantee shall inform all subscribers annually and all prospective subscribers or users of complete information respecting billing and collection procedures, procedures for ordering changes in or termination of services, and refund policies, upon solicitation of service and prior to the consummation of any agreement for installation of service. Such information shall be written in plain English.
- H. *Notice of complaint procedures:* Grantee shall periodically, and at various times of the day, present its business office address and publicly listed local telephone number by means of alpha-numeric display on a local origination channel.
- I. *Investigation and remedial action:* For recurrent complaints regarding service deficiencies (other than total or partial loss of service, such as ghosting, weak audio signal, distortion, and the like), the Cable Television Administrator may require the Grantee to investigate and report to the causes and cures thereof, and the Cable Television Administrator may also conduct an investigation. Thereafter, the Cable Television Administrator may order specified remedial action to be taken within reasonably feasible time limits. If such action is not taken, or is ineffective, or if within thirty (30) days the Grantee files with the City a notice of objection to the order, the City may conduct a hearing and may, if the evidence warrants a finding of fault on the part of the Grantee, take appropriate action pursuant to the terms of this ordinance.

Sec. 12-4-33: Transfer.

- A. *Transfer of franchise:* A franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title to the cable system, legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the City, such consent not to be unreasonably withheld. Except that no consent shall be required for any sale, transfer, or assignment of ownership to an affiliate under common control with Grantee, provided that prior to such transfer, Grantee provides to the City verifiable information to establish that such transferee has the financial, legal and technical ability to fully perform all obligations of the franchise. No such consent shall be required, however, for a transfer by mortgage to a federally licensed lending institution in order to secure indebtedness. Within thirty (30) days of receiving the request for transfer, the franchising authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the franchising authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such requested information, consent by the franchising authority shall be deemed given.
- B. *Transfer of ownership:* The Grantee shall not sell, transfer or dispose of thirty percent (30%) or greater ownership interest in the Grantee or more at one time of the ownership or controlling interest in the system, or thirty percent (30%) cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert without the consent of City. Every sale, transfer, or disposition of thirty percent (30%) or greater ownership interest as specified above in the Grantee shall make the franchise subject to cancellation unless and until the City shall have consented thereto.
- C. *Transfer of control:* The Grantee shall not change control of the Grantee in whatever manner exercised without the prior written consent of the City.
- D. *City approval:* Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the City shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective transferee or controlling party, and the Grantee shall provide the City with all required information. The City reserves the right to impose certain conditions on the transferee as a condition of the franchise to ensure that the transferee is able to meet existing ordinance and franchise requirements.
- E. *Assumption of control:* 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

City that it will take control and operate the cable television system. If the financial institution takes possession of the cable communications system the City shall take no action to effect a termination of the franchise without first giving to the financial institution written notice thereof and a period of six (6) months thereafter (unless otherwise provided herein below) (i) to allow the financial institution or its agent(s) to continue operating as the Grantee under the franchise and; (ii) to request the City, and for the City to determine whether, to consent to the assignment of the Grantee's rights, title, interest and obligations under the franchise to a qualified operator. The City acknowledges that in order for the financial institution to realize upon the collateral accorded to it by the loan documents, the financial institution must be entitled to a reasonable period of time after taking possession of the franchise under the loan document to obtain the City's consent to an assignment of the franchise to a qualified operator. The City agrees that such reasonable period of time is six (6) months after the financial institution takes possession of the cable communication system and, further, agrees that the City shall use its best efforts to decide upon the assignment of the franchise to the new operator proposed by the financial institution within such period of time. The financial institution shall be entitled to such possession and other rights granted under this paragraph until such time that the City determines whether to consent to such assignment (the extended time). If the City finds that such transfer, after considering the legal, financial, character, technical and other public interest qualifications of the applicant are satisfactory, the City will consent to the transfer and assign the rights and obligations of such franchise as in the public interest. During the six (6) month period or extended time, the financial institution shall enjoy all the rights, benefits and privileges of the Grantee under the franchise, and the City shall not disturb such possession by the financial institution, provided the financial institution complies in all respects with the terms and provisions of the franchise and this ordinance. The various rights granted to the financial institution under this paragraph are contingent upon the financial institution's continuous compliance with the terms and provisions of this ordinance and the franchise during the entire aforementioned six (6) month period or extended time, if applicable. For example, should an agent of the financial institution take possession of the cable communication system pursuant to rights granted to the financial institution under this paragraph, and such agent fails to comply with the level of service requirements set forth in this ordinance or the franchise, the rights granted to the financial institution under this ordinance and the franchise shall automatically terminate.

- F. *No waiver of City property rights:* The consent or approval of the City or any other public entity to any transfer of the Grantee shall not constitute a waiver or release of the rights of the City in and to the public property or public rights of way, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this ordinance and the franchise.
- G. *Transfer time periods:* In the absence of extraordinary circumstances, the City will not approve any transfer or assignment of the franchise prior to construction or the completion of the rebuild of the system. Subject to the conditions of Section 617 of the Cable Act, the City shall not approve a transfer if the Grantee has not held the franchise for a period of three years.
- H. *Right to review purchase price:* Based upon public information, the City reserves the right to review the purchase price of any transfer or assignment of the cable system.
- I. *Signatory requirement:* Any approval by the City of transfer of ownership or control shall be contingent upon the prospective party becoming a signatory to the franchise agreement.

Sec. 12-4-34: Publication costs.

The Grantee shall assume the cost of publication of the franchise ordinance as such publication is required by law. A bill for the publication costs shall be presented to the Grantee by the City upon the Grantee's filing of acceptance and shall be paid at that time.

Sec. 12-4-35: Ordinances repealed.

All ordinances are parts of ordinances in conflict with the provisions of this article are hereby repealed.

Sec. 12-4-36: Separability.

If any section, subsection, sentence, clause, phrase or word of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Sec. 12-4-37: Time is of the essence to this ordinance.

Whenever the ordinance shall set forth any time for any act to be performed by or on behalf of the Grantee, such time shall be deemed by the essence any failure of the Grantee to perform within the time allotted shall always be sufficient ground for the City to invoke an appropriate penalty including possible revocation of the franchise.

Sec. 12-4-38: No waiver of rights.

No course of dealing between the Grantee and the City nor any delay on the part of the City in exercising any rights hereunder shall operate as a waiver of any such rights of the City or acquiescence in the actions of the Grantee in contravention of rights except to the extent expressly waived by the City or expressly provided for in the franchise.

DIVISION 2. RATE REGULATIONS

Sec. 12-4-39: Rate regulation proceedings.

Any rate regulation proceedings conducted under this division shall be in accordance with FCC rate regulations.

- A. In the course of the rate regulation proceeding, the City may request additional information from the cable operator that is reasonably necessary to determine the reasonableness of the basic service tier rates and equipment charges. Any such additional information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry. The City may request proprietary information, provided that the City shall consider a timely request from the cable operator that said proprietary information shall not be made available for public information, consistent with the procedures set forth in section 0.459 of the FCC rules and regulations.
Furthermore, said proprietary information may be used only for the purpose of determining the reasonableness of the rates and charges or the appropriate rate level submitted by the cable operator. The City may exercise all powers under the laws of evidence applicable to administrative proceedings under the laws of the state to discover any information relevant to the rate regulation proceeding, including, but not limited to, subpoena, interrogatories, production of documents and depositions.
- B. Upon termination of the rate regulation proceeding, the City shall adopt and release a written decision whether the rates or proposed rate increase are reasonable or unreasonable, and, if unreasonable, its remedy, including prospective rate reduction, rate prescription and refunds.
- C. The City may not impose any fines, penalties, forfeitures or other sanctions, other than permitted by the FCC rules and regulations, for charging an unreasonable rate or proposing an unreasonable rate increase. However, the City may impose fines or monetary forfeitures on a cable operator that does not comply with a rate decision or refund order of the City, directed specifically at the cable operator, pursuant to the laws of the state and the City Code.
- D. Consistent with the FCC rules and regulations, the City's decision may be reviewed only by the FCC.
- E. The City shall be authorized, at any time, to gather information as necessary to exercise its jurisdiction as authorized by the laws of the state, the Cable Act, and the FCC rules and regulations. Any information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry.

Sec. 12-4-40: Certification.

The City shall file with the FCC the required certification as necessary.

Sec. 12-4-41: Notification of changes.

With regard to the cable programming service tier, as defined by the Cable Act and the FCC rules and regulations, and over which the City is not empowered to exercise rate regulation, the cable operator shall give notice to the City of any change in rates for the cable programming service tier or tiers, any change in the charge for equipment required to receive the tier or tiers, and any changes in the nature of the services provided, including the program services included in the tier or tiers. Said notice shall be provided to the City at least thirty (30) business days prior to any change becoming effective.

Sec. 12-4-42: Cable official.

The City may delegate its power to enforce this division to the Iowa City Telecommunications Commission or to employees or officers of the City, to be known as the cable official. The cable official shall have authority to:

- A. Administer oaths and affirmations;
- B. Issue subpoenas;
- C. Examine witnesses;
- D. Rule upon questions of evidence;
- E. Take or cause depositions to be taken;
- F. Conduct proceedings in accordance with this division;
- G. Hold conferences for the settlement or simplification of the issues by consent of the parties; and
- H. Take actions and make decisions or recommend decisions in conformity with this division.

SECTION II. REPEALER. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION III. SEVERABILITY. If any section, provision or part of the Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Ordinance No. _____

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SECTION IV. EFFECTIVE DATE. This Ordinance shall be in effect after its final passage, approval and publication, as provided by law.

Passed and approved this _____ day of _____, 2005.

MAYOR

ATTEST: _____

CITY CLERK

Approved by

City Attorney's Office