

CHAPTER 113

CABLE TELEVISION FRANCHISE AND REGULATIONS

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

1. “Cable television system” or “system” means any system which receives and amplifies signals broadcast by one or more television and/or radio stations and which transmits such signals and programming by wire or cable to persons who subscribe to such service.
2. “Federal Communications Commission” or “FCC” means the Federal agency by that name as constituted by the Communications Act of 1934, as amended.
3. “Grantee” means the person granted a franchise in accordance with the provisions of this chapter, and when the context so requires, means and includes the Grantee, its officers, agents, employees, servants and independent contractors.
4. “Gross revenues” means any and all compensation, in whatever form, exchange or otherwise, derived from the provisions of all cable services in the City.

113.02 GRANT OF AUTHORITY. There is hereby granted by the City to the Grantee the nonexclusive right and privilege to construct, erect, operate and maintain upon, along, across, above, over and under the streets, alleys, public ways and places now laid out or dedicated and all extensions thereof and additions thereto in the City, poles, wires, cables and fixtures necessary for the construction, operation and maintenance of a cable television system, to be used for the sale and distribution of cable services to the residents of the City. The Grantee shall be subject to all laws and regulations of the City. The Grantee shall have the right to lease, rent or in any other manner obtain the use of poles,

lines, cables and other facilities from any and all holders of public licenses and franchises within the City.

113.03 FRANCHISE TERM. The duration of the franchise shall be fifteen (15) years from the date the franchise is awarded.

113.04 FRANCHISE TERRITORY. The franchise territory, also referred to as the service area, includes the entire corporate limits of the City and any area annexed thereto during the term of the franchise. Service shall be provided to any annexed territory within three years of the annexation.

113.05 TRANSFER OF CONTROL. The Grantee shall not make or enter into any deed, deed of trust, mortgage, contract, loan, lease, pledge, sale or any other agreement concerning transfer of control of more than five percent (5%) of any of the property or facilities of the cable television system without the written consent of the City. This section does not apply to the disposition of worn out or obsolete facilities or personal property in the normal course of business. No resident of the City shall have any voting or financial interest in the company, corporation, partnership or other entity comprising the Grantee. This restriction does not apply if the Grantee is a publicly held corporation.

113.06 SERVICE. During the term of the franchise, the Grantee shall furnish reasonable, adequate and efficient cable television reception service to its subscribers and shall maintain its system in reasonable repair and working order. These requirements may be temporarily suspended due to circumstances beyond the control of the Grantee subject to approval of the Council.

113.07 SYSTEM CAPACITY. The system shall have two-way capabilities, shall initially be capable of carrying a minimum of twenty (20) channels, and shall conform to the channel capacity and performance requirements of the FCC. Furthermore, the system shall include in its basic service a minimum of ten (10) channels. The system shall be engineered to provide an audio alert system to allow authorized officials to automatically override the audio signal and to transmit and report emergency information. In addition, the Grantee is encouraged to develop and operate, as it may become technologically and economically feasible, additional channels, including an educational access channel, lease access channel, and local origination channel. The Grantee shall not telecast, tape, reproduce or otherwise convey to its subscribers the activities of any recognized educational authority without the written consent of the governing body of such authority.

113.08 RATES. In consideration for services rendered to subscribers, the Grantee shall have the right to charge and collect reasonable and just

compensation which shall reflect, among other things, the Grantee's need to attract new capital and provide a reasonable return on invested capital.

113.09 SERVICE RULES. The Grantee shall have the right to prescribe service rules and regulations for the conduct of its business with its subscribers, not inconsistent with the provisions of the franchise or with FCC rules and other applicable laws and regulations. The Grantee shall submit to the City the form of its service agreement, shall furnish the City a full schedule of its charges before soliciting subscribers within the City, and shall furnish the City any amendments or alterations on the service agreement or schedule of charges.

113.10 FRANCHISE FEE. As compensation for the franchise granted herein and as consideration for the use of the streets and other facilities of the City for the operation of the cable television system, the Grantee shall pay to the City an amount equal to three percent (3%) of the Grantee's gross annual revenues less programming fees from all cable services within the City during the calendar year. Such franchise fee shall be payable by April 1 following the end of the calendar year. The Grantee shall submit an annual report to the City summarizing the previous year's activities and a financial statement, including a statement of income, balance sheet and a statement of the source of all funds.

113.11 USE OF STREETS AND PROPERTY.

1. All transmissions and distribution structures, lines and equipment erected by the Grantee in the City shall be located so as not to endanger or interfere with the normal use of streets, alleys, public ways and places, so as not to interfere with existing utility installations and so as to comply with all State and City laws and ordinances. The Grantee shall file maps, plats and records with the City showing the location and character of all facilities.

2. The City shall lease space on one leg of the water tower for mounting off-the-air antennas to be installed by the Grantee. The City shall also lease a fifty-foot by seventy-five-foot plot adjacent to the water tower (Lot 6, Block 2) for use as a headend site. Grantee shall be issued a permit to construct a TV receive-only reflector on this site, and a small building for housing electronic equipment. The City agrees to keep the adjacent lot (Lot 7, Block 2) free of structures and tall trees during the term of the franchise, so that incoming signals from geostationary satellites will not be blocked. The lease rate for use of the site and tower leg shall be \$120.00 annually. The location of all equipment and facilities shall be approved by the Council or its authorized representative prior to installation.

3. In case of any disturbance of any street, sidewalk, driveway, lawn or other surfacing, the Grantee shall, at its expense, and in a manner approved by the City, promptly replace and restore all such surfacing to its original condition.
4. The City reserves the right, upon reasonable notice, to require the Grantee to temporarily disconnect, relocate or remove its equipment and facilities at its expense as is required by reason of traffic conditions, public safety, street construction, or other conditions of public interest.
5. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same, and the Grantee shall be given at least forty-eight (48) hours' advance notice.
6. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of the trees from coming in contact with the wires and cables of the Grantee, except that the City may, at its option, do or have such trimming done at the expense of the Grantee.

113.12 INDEMNIFICATION AND INSURANCE. The Grantee shall at all times defend, indemnify, protect and hold the City harmless from and against any and all liability, losses, damages and expenses, including attorney's fees, to property, bodily injury or death to any person, which may arise out of or be caused by the construction, installation, operation or maintenance of the cable television system caused by any act or failure to act on the part of the Grantee, its officers, agents, employees, servants and independent contractors. The Grantee shall during the term of the franchise maintain insurance in such forms and in such companies as shall be approved by the City to protect the City and the Grantee from and against any and all claims, injury or damage to persons or property caused by the construction, operation and maintenance of any structure or equipment. The amount of such insurance shall be not less than \$1,000,000 as to any one person, \$3,000,000 as to any occurrence for injury or death to persons, and \$1,000,000 as to property damages. Copies of all insurance policies shall be furnished to the City prior to the commencement of operations.

113.13 COMPLAINT PROCEDURE. The Council has primary responsibility for the continuing administration of the franchise and implementation of complaint procedures. The Grantee shall maintain an office in the City or a toll-free telephone listing, and be so operated that complaints and requests for repairs or adjustments may be received on a 24-hour basis. The

Grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the same. No charge shall be made for any repair services rendered to subscribers. The Grantee shall establish procedures for receiving, acting upon and resolving subscriber complaints to the satisfaction of the Council. The Grantee shall furnish a notice of such procedures to each subscriber at the time of the initial subscription to the system.

113.14 REVOCATION. The City has the right to rescind or revoke the franchise herein granted upon any violation by the Grantee of any material and substantial provision contained herein, or of any order or direction issued by the City in connection therewith. Prior to such revocation, the City shall give written notice to the Grantee specifying precisely the manner in which the Grantee is in violation. The notice shall specify a reasonable amount of time in which the Grantee must correct the violation, but in no event shall the time period be less than thirty (30) days from the receipt of the notice to the Grantee. The City reserves the right to levy fines upon the Grantee in an amount not to exceed one hundred dollars (\$100.00) per violation for material breaches of the franchise agreement. Nothing is intended as a waiver of any other rights the City may have at the time of such cancellation, revocation or expiration.

113.15 OPTION TO PURCHASE. Upon cancellation or revocation of the franchise, the City shall have the option of purchasing the system at a price equal to its value determined by three independent appraisers in accordance with generally accepted cable television appraisals and accounting principals. Upon cancellation, revocation or expiration of the franchise, the City shall have the right to require the Grantee to remove, at its expense, all portions of the system from all streets, alleys and public ways within the City.

113.16 SECURITY FUND. The Grantee shall deposit with the Clerk and maintain on deposit throughout the term of the franchise, the sum of five thousand dollars (\$5,000.00) or a suitable financial guarantee bond, renewed annually, as security for the faithful performance of the provisions of the franchise, the compliance with the provisions of this chapter, and all orders, permits and directions of the City and of any agency of the City having jurisdiction over its acts or defaults under the franchise or this chapter, and its payment of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system. If the Grantee fails to pay to the City any compensation within the time fixed herein or fails to pay to the City, after ten days' notice, any taxes due and unpaid, or fails to repay to the City, after ten days' notice, any damages, costs or expenses which the City may be compelled to pay by reason of any act or default of the Grantee in connection

with the franchise, or fails, after three days' notice, to comply with any provision of the franchise which the Council reasonably determines can be remedied by an expenditure from the security fund, the City may immediately withdraw or claim from surety the amount thereof, with interest and any penalties, and upon such withdrawal, the Clerk shall notify the Grantee or surety of the amount and the date thereof. Within ten days after notice that any amount has been withdrawn from the security fund deposited pursuant to this section, the Grantee or surety shall deposit with the Clerk a sum of money sufficient to restore the security fund or financial guarantee bond to the original sum of \$5,000.00. The security fund or face value of bond, pursuant to this section, shall become the property of the City in the event the franchise is canceled by reason of the default of the Grantee. The amount of the security fund or financial guarantee bond may be reduced to \$1,000.00 after construction of the system is complete, if approved by the City. At the expiration of the franchise, the Grantee shall be entitled to the return of any security fund or the portion thereof then remaining on deposit, provided that there is then no outstanding default on the part of the Grantee. Interest earned by the investment of the security fund shall accrue to the Grantee. The rights reserved to the City with respect to the security fund or financial guarantee bond are in addition to all other rights of the City, whether reserved by the franchise or authorized by law; and no action, proceeding or exercise of a right with respect to such security fund shall affect any other rights which the City may have.

113.17 OTHER BUSINESS ACTIVITIES. The Grantee shall not engage in the business of selling, repairing or installing television receivers, radio receivers or accessories, excluding converters and decoders, within the City during the term of the franchise. Nothing herein shall be deemed to prohibit the Grantee, at the request of the subscriber and without payment, from examining and adjusting a subscriber's receiver to determine whether reception difficulties originate in the receiver or in the system.

EDITOR'S NOTE

Ordinance No. 280 adopting a cable television franchise for the City was passed and adopted on October 28, 1982.