

CHAPTER 114

CABLE TELEVISION REGULATIONS

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114.01 PURPOSE. The purpose of this chapter is to provide regulatory provisions of cable television systems in the City. The ordinance codified in this chapter shall be known and may be cited as the “Tiffin Cable Television Regulatory Ordinance.”

114.02 DEFINITIONS. For the purpose of this chapter, the following terms, phrases, words and derivations shall have the meanings given in this section:

1. “Cable television system” means any facility that, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals, by wire or cable, to subscribing members of the public who pay for such services.
2. “Channel” means the segment of the electromagnetic spectrum to which a source of television transmission is assigned.
3. “FCC” or “Federal Communications Commission” means that Federal agency constituted by the Communication Act of 1934, as amended.
4. “Franchise” means the rights, privileges, and authority granted by the City to the Grantee hereunder and includes all of the terms and conditions of this chapter.
5. “Grantee” means any corporation, partnership, or individual granted a nonexclusive franchise to provide cable television services in the City.
6. “Gross subscriber revenues” means only those revenues derived from the monthly service charges paid by subscribers located within the City for regular cable television reception service, which service includes only the transmission of broadcast signals and the programming presented on the required access and origination channels, if any. Gross subscriber revenues shall not include any revenues received:

- A. As reimbursement of expenses in the operation of any access channels;
 - B. As advertising payments;
 - C. From the leasing of cable channels;
 - D. From programs for which a per-channel, per-program or tier charge is made; and
 - E. From furnishing other communications and non-broadcast services either directly or as a carrier for another party or any other income derived from the system. Gross subscriber revenues shall also not include revenues received as installation charges and fees for reconnections, inspections, repairs, or modifications of any installations.
7. "Private property" means all property, real, personal, or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.
8. "Property of the Grantee" means all property, real, personal, or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.
9. "Public property" means all property, real, personal, or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

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

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

114.04 TAXES. The Grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees, and other charges of a like nature which may be taxed, charged, assessed, levied, or imposed upon the property of the Grantee and upon any services rendered by the Grantee.

114.05 INSURANCE. The Grantee shall indemnify the City and hold it harmless from all liability, damage, costs, or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to this chapter. The Grantee shall, at all times during the term of the franchise, carry and require their contractors to carry:

1. Insurance in such forms and in such companies as shall be approved by the City to protect the City and Grantee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of any structure, equipment or appliance, or by reason of any conduct undertaken pursuant to this chapter. The amounts of such insurance to be carried for liability due to property damage shall be \$500,000.00 as to any one occurrence and against liability due to injury to death of persons, \$500,000.00 as to any one person and \$1,000,000.00 as to any one occurrence.
2. Worker's Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$100,000.00, which shall cover all operations to be performed by the Grantee as a result of this chapter.
3. Automobile insurance with limits of not less than \$100,000.00/\$300,000.00 of public liability coverage and automobile property damage insurance with a limit of not less than \$100,000.00 covering all automotive equipment, with so-called umbrella coverage of at least \$1,000,000.
4. All of said insurance coverage shall provide a ten-day notice to the City in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.
5. Copies Filed. Copies of all insurance policies required hereunder shall be furnished to and filed with the City prior to the commencement of operations or the expiration of prior policies, as the case may be.

Grantee's worker's compensation, comprehensive general liability, and comprehensive automobile liability insurance shall be written by an insurance company authorized to do business in the State of Iowa.

114.06 HOLD HARMLESS. During the term of the franchise, the Grantee absolutely assumes and agrees to pay the City for, and the Grantee forever agrees to indemnify the City against, and agrees to hold harmless and save the City harmless from any and all damage, injury, costs, expenses, liability, claims, settlements, judgments, decrees and awards of every kind and nature whatsoever, including attorney's fees, costs, and disbursements, that may ever be claimed against the City by any person whatsoever, or on account of any actual or alleged loss, damage or injury related to or connected with (directly or indirectly):

1. Any injury to or death of any person, or loss, damage, or injury to any property of the Grantee;
2. Any nonobservance by the Grantee of the provisions of any laws, statutes, ordinances, resolutions, regulations, or rules duly promulgated by any governmental entity which may be applicable, directly or indirectly, to rights, privileges, and authority and the obligations and liabilities assumed by the Grantee under the franchise;
3. Any nonobservance by the Grantee of any of the terms and conditions of the franchise; and/or
4. The granting of the franchise.

114.07 ASSIGNMENT. The Grantee shall not assign or transfer any right granted under this chapter to any other person without prior consent of the Council, which consent shall not be unreasonably withheld, provided that the Grantee shall have the right to assign the provisions of this chapter to a corporation wholly owned by the Grantee or to a limited partnership of which the Grantee is a general partner without the prior consent of the City.

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

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

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

114.11 COMPLIANCE WITH APPLICABLE LAWS. During the term of the franchise, the Grantee shall comply with all governmental laws, ordinances, rules or regulations as may be applicable to the construction, operation, maintenance, repair, replacement, renewal, reconstruction, and removal of a cable television system, the sale and supply of audio and video communications services, the use of public property and private property and the engagement in such further activities as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system.

114.12 COMPLIANCE WITH NATIONAL ELECTRICAL SAFETY CODE. The construction, operation, and maintenance of the system by the Grantee shall be in full compliance with such portions of the *National Electrical Safety Code* which may be applicable. All facilities and equipment of the Grantee shall be constructed and maintained in accordance with the requirements of the *National Electrical Safety Code*. However, the Grantee shall only be required to lay cable at a minimum depth of 18 to 20 inches at all places except streets, and when laying cable under streets, the Grantee shall bury cable at a minimum depth of 24 to 36 inches. The Grantee shall also be required to attach to ground blocks whenever feasible.

114.13 COMPLIANCE WITH FCC RULES AND REGULATIONS. The Grantee shall at all times comply with the rules and regulations of the FCC governing cable television operations. The Grantee shall notify the FCC of the granting of the franchise as required by the regulations of the FCC.

114.14 CONSTRUCTION AND OPERATION SCHEDULE. The Grantee shall accomplish significant construction of at least 20 percent within one year after receiving FCC certification and other necessary Federal approvals, and shall thereafter reasonably make cable service available to all residents of the City, subject to the line extension provision of Section 114.21, within two years of receiving Federal approval.

114.15 INSTALLATION AND MAINTENANCE OF PROPERTY OF GRANTEE.

1. During the term of the franchise, the property of the Grantee shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed, and removed in accordance

with generally accepted engineering principles so as not to endanger or interfere with the lives of persons or to interfere with improvements which the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

2. The Grantee shall construct its cable system using material of good and durable quality and all work involved in the construction, installation, maintenance, and repair of the cable system shall be performed in a safe, thorough, and reliable manner. All municipal property damaged or destroyed shall be promptly repaired or replaced by the Grantee.

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

4. In the event the City elects to alter or change the grade of any street, alley, or other public way, the Grantee, upon notice by the City, shall remove, relay, or relocate its wires, cables, or other fixtures at the Grantee's own expense.

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

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

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

114.19 TEMPORARY REMOVAL OF CABLES. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its cables to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of cables shall be paid by the person requesting the same and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than 48 hours' advance notice to arrange for such temporary cable changes.

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

114.21 LINE EXTENSIONS. It shall be the obligation of the Grantee to serve all residents of the City except to the extent that density of homes, adverse terrain, or other factors render providing service impracticable, technically infeasible, or economically non-compensatory. For purposes of determining compliance with the provisions of this section, and to provide for a reasonable and nondiscriminatory

policy governing extensions of cable service within the City, Grantee shall extend service to new subscribers at the normal installation charge and monthly rate for customers of that classification where there is an average of 30 homes per each linear mile of new cable construction. In the event the requirements of this section are not met, extensions of service shall be required only on a basis which is reasonable and compensatory.

114.22 CITY RIGHTS.

1. City Rules. The right is reserved by the City to adopt, in addition to the provisions contained in this chapter and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power; provided, such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights granted in this chapter, and shall not be in conflict with the applicable laws of the State or the United States or any FCC regulations.
2. Emergency. In the case of any emergency, the Grantee shall, upon request of the City, make available its facilities to the City for emergency use during the emergency period.
3. Liability. The City shall not be liable for any damage occurring to the property of the Grantee caused by employees of the City in the performance of their duties. The City shall not be liable for the interruption of service by actions of City employees in the performance of their duties, nor shall the City be liable for the failure of the Grantee to be able to perform normal services due to acts of God or other factors beyond the control of the City.
4. No Property Right. Nothing in this chapter shall grant to the Grantee any right of property in the City-owned property.
5. Construction Approval by City. The City shall have the right to inspect the construction, operation, and maintenance of the system by the Grantee to insure the proper performance of the terms of this chapter.
6. Correction of Defects. In the event the Grantee should violate any of the terms of this chapter, the City shall immediately give to the Grantee 60 days' written notice to correct such violation and in the event the Grantee does not make such correction within 60 days after the receipt of such written notice, the City may make such correction itself and charge the cost of same to the Grantee, and the Grantee shall pay such charges within 30 days.

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

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

114.25 SERVICE PROCEDURES. During the term of the franchise, a toll-free telephone number shall be provided by the Grantee to receive complaints regarding quality of service, equipment malfunctions, and similar matters. The office shall be open to receive inquiries or complaints from subscribers during normal business hours, Monday through Friday.

1. Any complaints from subscribers shall be investigated and acted upon as soon as possible, but at least within five business days of their receipt. The Grantee shall keep a maintenance service log which will indicate the nature of each service complaint, and the date and time it was received.

2. The Grantee shall, by appropriate means, such as a card or brochure, as subscribers are connected or reconnected to the system, furnish information concerning the procedures for making inquiries and/or complaints, including the name, address, and toll-free number of the Grantee.

3. The equipment installed by the Grantee on behalf of the subscriber shall remain the property of the Grantee, and shall be subject to reasonable inspection and service by the Grantee at reasonable hours, and removal upon nonpayment or termination of the service.

4. In the event that any subscriber fails to meet his or her obligations according to payment for services and to meet reasonable Grantee rules and regulations, the Grantee shall have the right to withhold or deny services to such subscriber.

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

114.27 SERVICE AGREEMENTS. The Grantee shall have the right to prescribe a reasonable form of service agreement for use between the Grantee and its subscribers. Such service agreement shall be consistent with the terms and conditions of the franchise.

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

114.29 CHANNEL CAPACITY AND PERFORMANCE. During the term of the franchise, the cable television system of the Grantee shall conform to the channel capacity and performance requirements contained in the regulations of the FCC, as updated.

114.30 INSTALLATION AND MAINTENANCE OF SUBSCRIBER TERMINALS IN CITY BUILDINGS AND SCHOOLS. During the franchise, the Grantee shall at its sole cost, install and maintain a subscriber terminal in such buildings owned or used by the City, and in such buildings owned or used by recognized educational authorities within the City, both public and private, as may be designated by the governing body having jurisdiction thereof. Such subscriber terminals shall be placed in such location within such buildings as may be designated by the governing body having jurisdiction thereof. This provision is meant to apply only to those buildings accessible to Grantee's system.

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

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

114.33 RATES AND CHARGES.

1. Except as otherwise provided, the Grantee shall have the right, privilege, and authority to charge rates and charges to its subscribers for its service.

2. Multi-user rates and charges may be negotiated between the Grantee and the subscriber, but in no event shall the multi-user rates and charges for any subscriber exceed the aggregate of rates and charges which would be charged to the multi-user if completed on the basis of the single-user rates and charges.
3. In addition to the monthly service rate, the Grantee may add to that rate taxes or City fees imposed upon the Grantee's gross subscriber revenues by City, County, State or Federal governmental or legislative bodies and fees or charges imposed upon the Grantee for the use and distribution of copyrighted program material.
4. Grantee may, at its own discretion, waive, reduce, or suspend connection fees for specific or indeterminate periods and/or monthly service fees for promotional purposes.
5. There will be no installation charge during the time of construction for the first 30 days after the local feeder cable is available for connection.
6. A current schedule of rates shall be kept on file with the City Clerk.
7. For the purposes of this section, "basic monthly cable television service" is the provision of television broadcast signals and access and origination channels, if any, and does not include advertising services, rental of studios or equipment, provision of program production services, per-channel or per-program charges to subscribers ("pay cable"), rental of channels, sale of channel time, provision of commercial services such as security systems, or any other services of the system, the rates and charges for which shall not require approval of the City.
8. Grantee shall have the right to change the rates for basic monthly cable television service, provided that rate increases shall not occur less than one year apart from one to the next.

114.34 PROTECTION OF PRIVACY. The Grantee shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of two-way services utilizing aural, visual, or digital signals without first obtaining written permission of the subscriber. It is unlawful for any person to attach or affix or cause to be attached or affixed any equipment or device which allows access or use of the cable television service without payment to the Grantee for same. Such action shall be a simple misdemeanor.

114.35 PROGRAM CONTENT RESTRICTIONS. In addition to providing basic cable television service consisting of broadcast and automated signals, the Grantee may offer subscribers optional services on a per-program or per-channel basis. However, the Grantee shall not display X-rated motion pictures either as part of its basic cable or pay cable services.

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

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

114.38 RECORD KEEPING. The Grantee shall keep accurate and current records, maps, and plans, and these items shall be made available for inspection by the City.

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

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

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

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

114.43 ARBITRATION. Any controversy between the City and the Grantee regarding the rights, duties, and liabilities of either party under the franchise shall be settled by arbitration. This section shall not apply to termination proceedings under Section 114.10. Such arbitration shall be before three disinterested arbitrators, one named by the City, one named by the Grantee, and one named by the two chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State.

114.44 RESERVATIONS. The right is reserved to the Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power.