



North Liberty Telecommunications Commission

Meeting Agenda

Monday, March 7, 2016

6:00 p.m. Regular Session

City Council Chambers, 1 Quail Creek Circle

1. Call to order.
2. Roll call.
3. Public comment for items not on the agenda.
4. Mediacom update.
5. South Slope update.
6. Telecommunications staff report.
7. Telecommunications Commission mission and purpose discussion.
8. Approval of minutes.
9. Old business.
10. New business.
11. Next meeting date.
12. Adjourn.

Communications Department Report

Submitted to the North Liberty City Council

March 30, 2016 for the period of March 2016

Blues & BBQ

On March 21, we announced St. Paul and the Broken Bones as our headline act to celebrate our 10th year. The band, from Birmingham, Ala., has been called “one of the nation’s best live bands” by NPR and can boast of appearances on the network’s Tiny Desk Concerts series, *Jimmy Kimmel Live* and the *Late Show with David Letterman*, Bonnaroo, Hinterland and Lollapalooza festivals. Entry to the festival, including live music, remains free, thanks to generous public and private sponsors.

Also new this year: we’re working to reduce the waste produced by the event and are requiring all food vendors to use compostable products at the event, and will be using compostable cups in our beverage garden, too.

Blues & BBQ will be held on July 9, 2016.

Projects

We hosted a second open house, this one at Grace Community Church, on March 3, specifically for the neighbors of the North Liberty Road and Dubuque Street project. Attendance wasn’t large, but the project’s engineers and contractor were able to make contact with the most impacted property owners.

We’ve worked with engineers to place digital message boards along the road for a week prior to each of the first two stages of construction, in addition to press releases, social media, news posts and project update e-mails. We also deployed our remaining KidAlert stand-up, first used in conjunction with Highway 965 detours last year, to families along Juniper Street for the North Liberty Road detour.

Nick attended the pre-construction meeting for the Penn Street project, and provided updates about coming traffic impacts.

Highway 965 naming

We’ve begun accepting suggestions for Highway 965’s honorary name. With about 70 collected so far, we’ll continue accepting names until April 8. Additionally, we’ve had several stakeholders apply to be appointed to the naming committee.

Community Center summer programming brochure

We worked with recreation and library staff to put together the brochure covering programs for the summer, as well as update the information online and publicize new programs.

Broadcast equipment upgrades

Nick made some updates to our cablecast equipment, replacing aging distribution amps and cabling. Additionally, while looking at additional broadcast server options, Erika found a server that can potentially serve as a hub for our planned digital signage. We're scheduled to take a deeper look in April.

Council goals

Stefan completed five of six planned videos covering the City Council's goals, and is waiting to be able to shoot the final installment. The videos are available on the city's website.

Social media

We've been on a variety of social media platforms for since 2008, and these platforms have become an increasingly vital communication avenue for us. Recognizing these channel's importance, I'd like to begin incorporating some basic stats in these monthly reports. Before I get to the stats, I wanted to offer some context to the size of our audience compared to other municipalities near North Liberty in geography or population size. The chart below lists each city's Facebook, Twitter and Instagram account audience size.

Entity	Facebook	Twitter	Instagram
North Liberty	3,055	2,460	419
Ankeny	8,578	5,199	–
Cedar Rapids	3,095	7,333	–
Coralville	1,669	2,938	–
Clive	504	52	–
Des Moines	2,015	–	–
Iowa City	2,850	5,658	502
Marion	1,946	820	–
Solon	1,004	200	–

This is a bit of an apples-to-oranges comparison for a few of reasons: some cities' demographics (such as age, gender and income) make it more or less likely that stakeholders will use a platform; some cities operate multiple accounts (such as ones specifically for police, parks and recreation, or library); some cities benefit from being on the platform longer. It's interesting to note, for example, that North Liberty leads Iowa City in Facebook likes but lags in Twitter follows, for example. But North Liberty generally stacks up well.

For reports, I'm focusing on two basic stats to try to quickly capture the value of the work we do on these channels: new followers/likes and impressions. I've selected these because the former

indicates the whole channel's long-term value: people are aware of us and are interested in receiving updates. But the easiest way to not lose followers and likes is to not use a platform, so I've included impressions to offer some indication of much people see our posts through these channels. (Instagram doesn't offer impression data and so won't be included.)

Month	Facebook new likes	Facebook impressions	Twitter new follows	Twitter impressions	Instagram new follows
March 2016	139	110,268	43	26,200	41

Other

We produced and submitted City Council meetings and League of Women Voters legislative forum to the Iowa City and Coralville government channel.

Nick has been invited to serve a two-year term on the Iowa City/Coralville Area Convention and Visitors Bureau's new Partner Advisory Committee representing North Liberty.

Website Statistics (Current month and preceding 12)

Month	Users	Users	Pageviews	Pages/Session	Avg. Session
March 2016	19,400	14,590	37,648	1.94	1:18
February 2016	13,444	9,722	29,899	2.22	1:40
January 2016	15,994	11,582	34,566	2.16	1:33
December 2015	14,596	10,984	28,898	1.98	1:19
November 2015	14,280	10,477	29,299	2.05	1:23
October 2015	15,120	10,934	29,983	1.98	1:20
September 2015	14,061	10,142	28,736	2.04	1:21
August 2015	18,093	12,578	35,835	1.98	1:26
July 2015	22,441	15,475	44,453	1.98	1:26
June 2015	26,585	18,030	52,367	1.97	1:26
May 2015	18,917	13,302	39,685	2.10	1:34
April 2015	19,050	13,294	39,290	2.06	1:31
March 2015	17,538	12,052	37,272	2.13	1:34

Completed Shoots

Title	Requested By	Date Shot	Duration
Planning and Zoning Commission	City Administration	March 1	0:16
Council Goals (TD)	Communications	March 2	0:02
Parks and Recreation Commission	City Administration	March 3	0:35
CU: Optimist Pancake Breakfast	Communications	March 5	0:03
Telecommunications Commission	City Administration	March 7	1:00
Council Goals (BW)	Communications	March 8	0:03
City Council	City Administration	March 8	1:07
Council Goals (JS)	Communications	March 10	0:02
CU: Officer Tygert at North Bend	Communications	March 10	0:11
Council Goals (AN)	Communications	March 10	0:02

Transit Advisory Committee	City Administration	March 10	0:47
CU: Optimists Egg Hunt	Communications	March 19	0:02
Library Board of Trustees	City Administration	March 21	1:04
City Council	City Administration	March 22	3:22
Legislative Forum	LWV of JC	March 26	1:59
Council Goals (CH)	Communications	March 29	0:03
CU: Meet Ashley Kipp	Communications	March 30	0:03
CU: FaceNick	Communications	March 31	0:04
Total shoots: 18	Duration of new video: 10.75 hours		

Departmental Goals

Goal	Deadline	Status (as of Jan. 27)
Posting calendar for social media	02/01/16	Complete
Password management	02/01/16	Complete
Detailed roles and responsibilities for all staff	02/01/16	Complete
Hold first Beat the Bitter	02/06/16	Complete
Order new printer for office	02/15/16	Complete
Revisit Community News Survey	02/28/16	Complete
Back-up training for meetings, scheduling, other essential functions	03/01/16	EH developed checklist. Training ongoing.
Feature North Liberty sustainability on website, NLTV	03/31/16	FaceNick segment complete, other initiatives in process.
Update social media guidelines	04/01/16	Completed
Revamp programming and PSA production to reduce staff time by 25%	04/15/16	EH in week three of four-week trial period.
Replace broadcast equipment	07/01/16	Installed, waiting on cables to complete.
Feature one photo each month on social media from a non-communications staff member	07/01/16	Completed for month.
Compile list of local non-profit organizations, make contact with each	07/01/16	List compiled. SJ working through list.
Assess council chambers equipment	10/31/16	
Build Instagram followers to 500	12/31/16	416 followers, up from 249 on Jan. 1.
Monthly Drobo and photo library backups	12/31/16	Completed as scheduled.

Build photo library with 100 photos each month	12/31/16	Completed for month.
Increase professional development to a minimum of 12 hours a year	12/31/16	EH in CLP; NB, SJ looking for opportunities
One new community program produced each month	12/31/16	Completed for month.
Meet with library and recreation staff to spell out marketing goals with each brochure cycle	12/31/16	

North Liberty City Ordinance Chapter 25

Telecommunications Commission

25.01 PURPOSE.

The purpose of this chapter is to establish a Telecommunications Commission for the purpose of administering the North Liberty Cable Television Regulatory and Franchise Enabling Ordinance and Franchise Agreement.

25.02 COMMISSION ESTABLISHED.

There is established a Telecommunications Commission for the City.

25.03 APPOINTMENT AND TERMS.

The Telecommunications Commission shall consist of five members appointed by the Mayor, subject to the approval of the Council. The Commission members shall be at least eighteen years of age and legal residents of the City, except that one nonresident cable subscriber who is at least eighteen years of age may be appointed to the Commission in the Mayor's discretion. The five members shall be appointed for staggered terms, with no more than two members having their appointment end in a single year. All appointments shall be for terms of three years. In the event of a vacancy, a successor shall be appointed to fill the unexpired term for which such former member was originally appointed.

(Ord. 12-04 - Aug. 12 Supp.)

25.04 DUTIES.

The duties of the Telecommunications Commission are as follows:

1. Resolving disputes or disagreements between subscribers, potential subscribers, and the grantee should such parties be unable first to resolve their disputes. The Commission may conduct a public hearing upon any petition by any person seeking resolution of a dispute concerning the operation of any franchise granted by the North Liberty Cable Television Regulatory and Franchise Enabling Ordinance. The hearing shall be conducted informally and in such a manner as to give each party a reasonable opportunity to present its evidence. Following such hearing, the Commission shall issue its findings or determination. Such finding or decision shall be final, unless appealed to the Council within ten days of the Commission's decision. The Council, on appeal, may reverse, affirm, or modify the Commission's decision.
2. Reviewing and auditing reports submitted to the City as required by this chapter and such other correspondence as may be submitted to the City concerning the operation of the cable television system and to ensure that any necessary reports are completed and fulfilled pursuant to the terms of the North Liberty Cable Ordinance.
3. The Commission will work with the public and media to assure that all records, rules, and charges appurtenant to the cable television system are made available for inspection at reasonable hours upon reasonable notice.

4. Confer with the grantee and advise the City on the interconnection of the City system with other cable and communication systems.
5. Subsequent to the initial franchise, solicit, review, and provide recommendations to the Council for selection of applicants for franchises.
6. Initiate inquiries, receive requests for review of rates charged by the grantee, and provide recommendation on such actions to the Council.
7. Conduct evaluations of the cable television system at least every three years with the grantee and make recommendations to the Council concerning system improvements and amendments to this chapter or the franchise agreement.
8. Establish and administer sanctions as authorized by the North Liberty Cable Ordinance.
9. Make recommendations to the cable operator with regard to the cable television system and the educational and governmental access channels.
10. Ensure that the cable operator makes the public access channels available to all residents of the City on a nondiscriminatory basis and cooperate with the entity operating access channels as those operators develop rules for such channels.
11. Assure that the operation of the public access channel be as free of program censorship and control as legally possible.
12. Perform such other duties and functions relative to public access channels as may be appropriate in order to maximize their use among the widest range of individuals, institutions, and other organizations within the City. This includes recommendations to the Council for utilization of the annual franchise payment.

25.05 COMPENSATION.

Members of the Telecommunications Commission shall serve without compensation.

25.06 ELECTION OF OFFICERS.

The Commission shall elect from its own membership at its regular meeting in July its Chairperson and Vice Chair, each to serve for a term of one year. The Commission shall also appoint a Secretary at its regular July meeting, who may be (but need not be) a member of the Commission.

25.07 MEETINGS.

1. The Commission shall hold at least one regular meeting during each calendar quarter, or as needed, the time and place to be determined by its rules.
2. The Chairperson, Vice Chair or any three of the members of the Commission may call a special meeting by giving at least three days' notice in writing to every member of the Commission. The call for a special meeting shall include an agenda, and only matters included in that agenda may be discussed at the meeting.
3. A quorum of the Commission shall be three members.

4. The Chairperson shall vote as a member of the Commission.

5. The Commission shall submit minutes of any meeting to the City Clerk within a reasonable time after the meeting, but the submission shall be prior to the next regularly scheduled City Council meeting following said Commission meeting.

25.08 RULES AND REGULATIONS.

The Commission shall adopt such rules and regulations as it deems necessary to carry out its functions, conduct its meetings, and to ensure that notice and due process are given to all parties concerning any hearing on any complaints to said Commission and that the hearings are held promptly in accordance with reasonable notice to all parties.

North Liberty City Ordinance Chapter 115

Cable Television Regulations

115.01 INTENT.

The City finds that the development of cable communications systems has the potential of great benefit and impact upon the residents of the City. Because of the complex and rapidly changing technology associated with cable television, the City finds that the public health, safety, and general welfare can best be served by establishing certain regulatory powers in the City, as this chapter shall designate. It is the intent of this chapter to provide for the means to attain the best possible communication and developmental results in the public interest and for such public purpose. Any franchise granted pursuant to this chapter shall be deemed to include these findings as an integral part thereof.

115.02 TITLE.

The ordinance codified in this chapter shall be known and may be cited as the "North Liberty Cable Television Regulatory and Franchise Enabling Ordinance of 1997."

115.03 DEFINITIONS.

The following words shall have the meaning set forth in this section unless the context clearly requires otherwise:

1. "Access channel" means any channel used as an access channel as defined in the Cable Communications Policy Act of 1984 (47 USC 521 et seq.) as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 (the Act).
2. "Basic cable service" means any service tier which includes, at a minimum, the transmission of local television broadcast signals, local access channels, and any other television signals.
3. "Basic cable equipment" means the equipment used by subscribers to receive the basic service tier, including (but not limited to) converter boxes, remote controls, connections for additional television sets and cable home wiring.
4. "Broadcast services" means a broad category of programming which is received from broadcast television, low-power television, and radio stations and is capable of being received in the City.
5. "Cable service" means:
 - A. The one-way transmission to subscribers of video programming or other programming services; and
 - B. Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
6. "Cable 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 only subscribers without using any public right-of-way;

C. A facility of a common carrier, which is subject, in whole or in part, to the provisions of subchapter II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services;

D. An open video system that complies with Section 653 of the Cable Act;

E. Any facilities of any electric utility used solely for operating its electric utility system.

7. "Cablecast signal" means a non-broadcast signal that originates within the facilities of the cable system.

8. "Channel" or "cable 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.

9. "Commence construction" means the time and date when construction of the cable communications system is considered to have commenced, which shall be when the first connection is physically made to a utility pole, or undergrounding of cables is initiated, after preliminary engineering (including strand mapping) and after all necessary permits and authorizations have been obtained.

10. "Commence operation" means that time and date when operation of the cable communications system is considered to have commenced which shall be when sufficient distribution facilities have been installed so as to permit the offering of full services to at least 25 percent of dwelling units located within the franchise area.

11. "Commercial use channels" means the channel capacity designated for commercial use as defined and required by Federal law.

12. "Completion of construction" means that point in time when all distribution facilities specified in the franchise agreement have been installed by the grantee so as to permit the offering of cable service to all of the potential subscribers in the franchise area, as well as the provision, in an operational state, of any facilities required by the franchise agreement.

13. "Control" or "controlling interest" means actual working control or ownership of a North Liberty cable system in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except underwriters during the period in which they are offering securities to the public) of 20 percent or more of a North Liberty cable system or the franchise under which the system is operated. A change in the control or controlling interest of an entity which has control or a controlling interest in a grantee shall constitute a change in the control or controlling interest of the North Liberty cable system

under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person or entity.

14. "Converter" means an electronic device which converts signal carriers from one form to another.
15. "Dwelling unit" means any individual or multiple residential place of occupancy.
16. "FCC" means the Federal Communications Commission and any legally appointed or elected successor.
17. "Franchise" means the right granted through a franchise agreement between the City and a person by which the City authorizes such person to erect, construct, reconstruct, operate, dismantle, test, use, and maintain a system in the City.
18. "Franchise agreement" means a contractual agreement entered into between the City and any grantee hereunder which is enforceable by City and said grantee and which sets forth the rights and obligations between City and said grantee in connection with the franchise.
19. "Franchise fee" means any assessment imposed hereunder by the City on a grantee solely because of its status as a grantee. The term "franchise fee" does not include:
 - A. Any tax, fee, or assessment of general applicability (including any such tax for or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee, or assessment which is unduly discriminatory against grantee);
 - B. Capital costs which are required by the franchise to be incurred by grantee for educational or governmental access facilities;
 - C. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
 - D. Any fee imposed under Title 17, United States Code.
20. "Grantee" or "applicant" means any person granted a franchise hereunder, its agents, employees, or subsidiaries.
21. "Gross revenue, annual" means all revenue received from all sources in connection with the operation of grantee's cable system to provide cable service. Gross revenues include, without limitation, amounts for all cable service, including (but not limited to) basic service and tier service, premium and pay-per-view services, leased access, installation, and all other revenues derived from the operation of grantee's cable television system to provide cable services, adjusted for nonpayment. Gross revenues shall not deduct the following: (i) any operating expense; (ii) any accrual, including without limitation any accrual for commissions; or (iii) 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 revenues. Gross revenues 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 to provide cable services, 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 City. 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.

22. "Initial service area" means the area of the City which will receive service initially, as set forth in the franchise agreement.

23. "Installation" means the connection of the system from feeder cable to subscribers, terminals, and the initial provision of service.

24. "Leased access" means the use of the system by any business enterprise or other entity, whether profit, nonprofit or governmental, to render services to the citizens of the City, and includes all use pursuant to Section 532 of the Cable Act.

25. "Local origination channel" means any channel where the grantee or its designated agent is the primary programmer, and provides locally produced video programs to subscribers.

26. "Normal business hours," as applied to the grantee, means those hours during which similar businesses in the City are open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week and/or some weekend hours.

27. "Normal operating conditions" means those service conditions which are within the control of the grantee. Those conditions which are not within the control of the grantee include (but are not limited to) natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the grantee include (but are not limited to) special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

28. "Person" means any individual, firm, corporation, limited liability company, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

29. "Public education and government access facilities" or "PEG access facilities" means the total of the following:

- A. Channel capacity designated for public educational or governmental use; and
- B. Facilities and equipment for the use of such channel capacity.

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

31. "School" means any public or private elementary school, secondary school, junior college, college, or university which conducts classes or provides instructional services and which has been granted a certificate of recognition by the State of Iowa.

32. "Service area" is synonymous with "franchise territory" as defined in Section 115.04 of this chapter.

33. "Service interruption" means the loss of picture or sound on one or more cable channels.

34. "Street" means the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, driveway, or other public way now or hereafter existing as such within the City.

35. "Subscriber" means any person who legally receives any one or more of the services provided by the system.

36. "Telecommunications Commission" is the advisory body to Council on matters pertaining to the cable system and telecommunication system within the City. See Chapter 25 of this Code of Ordinances for specifics regarding this body.

115.04 FRANCHISE TERRITORY.

A franchise granted under this chapter is for the corporate territorial limits of the City, as they may exist now and in the future.

1. Service to All Residents. Grantee shall offer cable television service to all areas of the City, as specified in the franchise agreement.

2. New Residential Construction. Grantee shall extend service to all new residences in all unwired developments as specified in the franchise agreement.

3. Grantee shall offer service at rates that conform to any requirements of Federal, State, or local law. Grantee may, however, discontinue or refuse service to subscribers and potential subscribers who have not paid applicable charges. Further, the grantee may offer special services or rates to senior citizens, or services to commercial subscribers at rates different from those charged residential subscribers, which include (but are not limited to) charges for installation on a time and material basis. The grantee may also enter into separate contracts with multiple-dwelling unit buildings and may charge discounted rates for services based upon single point billing or other contractual considerations. This section does not preclude the grantee from offering promotional rates for service introductions or temporary promotional discounts, or from establishing a non-uniform rate structure for cable services for which rates are deregulated under Federal law.

4. Grantee shall provide a drop and basic service for one outlet, at no charge, to all current and future public buildings, including (but not limited to) city hall, fire stations, public libraries and public schools, that are presently located in the existing cable TV service area. New public buildings, schools, city halls, fire stations, public libraries and the Community Center will receive basic service for one outlet at no charge.

115.05 POLICE POWERS.

Nothing in this chapter or in any franchise agreement hereunder shall be construed as an abrogation by the City of any of its police powers.

115.06 GRANT OF FRANCHISE.

1. Application. All applicants for a franchise under this chapter shall prepare and file a written application with the City in such form as the City shall designate.

2. Review of Application. Upon receipt of an application under this chapter, the City shall review the same and make the application available for public inspection at such places and times as the City shall designate. A decision shall be made on the application by the City after evaluation thereof. The City may grant one or more franchises, or may decline to grant any franchise.

3. Franchise Required. Subject to Federal and State law, no cable system shall be allowed to operate, occupy, or use the streets in the franchise area for the provision of cable service without a franchise granted in accordance with this chapter.

4. Franchise Nonexclusive. Any franchise granted under this chapter shall be revocable and nonexclusive.

5. Franchise Requirements. City may establish appropriate requirements for new franchises or franchise renewals, and may modify these requirements from time to time to reflect changing conditions and technology in the cable industry.

6. Grant. In the event the City shall grant to a grantee or renew a nonexclusive, revocable franchise to construct, operate, maintain, and reconstruct a cable system within the franchise area, said franchise shall constitute both a right and an obligation to provide the service of a cable system as required by this chapter and the terms of the franchise agreement.

7. Conflict with Federal or State Laws. Any franchise granted under this chapter shall be consistent with Federal laws and regulations and the laws of the State of Iowa and regulations. In the event of a conflict between the chapter and Federal or State law, and the terms of this chapter are irreconcilable with such Federal or State law, the applicable Federal or State law shall control.

8. Chapter Revisions. Any franchise granted under this chapter is made subject to any revisions of this chapter and the general ordinances of the City, provided that such revisions do not materially alter or impair the obligations of grantee set forth in any franchise agreement.

9. Term. A franchise granted pursuant to this chapter shall become effective in accordance with the franchise agreement. The term shall be stated in the franchise, but shall in no event exceed fifteen years.

10. Other Licenses or Permits. A franchise granted under this chapter shall not take the place of any other license or permit legally required of a grantee.

115.07 FRANCHISE ACCEPTANCE.

To accept a franchise granted under this chapter, a grantee must file any required bonds, funds, and proof of insurance, as well as written notice of acceptance with the City Clerk within 60 days of the effective date of the franchise agreement. Such written notice shall include a certification that the grantee:

1. Will comply with this chapter, any franchise agreements made pursuant to this chapter, and all applicable City, County, State and Federal regulations in regard to the construction, operation, and maintenance of a cable system;

2. Accepts the franchise relying on its own investigation and understanding of the power and authority of the City to grant the franchise and the terms and conditions thereof;

3. Acknowledges that it has not been induced to enter into the franchise by any understanding or promise or by other statement, whether written or verbal, by or on behalf of the City or by any other third person concerning any term or condition of the franchise or chapter not expressed herein;

4. Shall have no recourse whatsoever against the City for any loss, cost, expense or damage by reason of the City's failure to have authority to grant any or all parts of the franchise, and will not at any time claim in any proceeding involving the City that any agreed upon term or condition of this chapter or the franchise is unreasonable or arbitrary, or that the City had no power or authority to grant or make any such term or condition. The grantee shall accept the validity of the terms and conditions of this chapter or the franchise in their entirety, except where such term or condition is irreconcilable with any Federal or State law or FCC rules and regulations.

5. Agrees that, in the event of any conflict between the chapter and the franchise agreement, the terms of the chapter shall prevail.

A grantee of a franchise granted or transferred under this chapter will pay for the actual printing cost and publication cost incurred in granting the franchise, not to exceed \$5,000.00.

115.08 TRANSFER OF OWNERSHIP OR CONTROL.

1. Transfer of Franchise. Any franchise granted under this chapter shall be a privilege to be held for the benefit of the public. Any franchise so granted cannot, in any event, be sold, transferred, leased, assigned, or disposed of, including (but not limited to) by forced or voluntary sale, merger, consolidation, or other means, without the prior written consent of the City, and then only under such reasonable conditions as the City may establish, subject to Section 537 of the Cable Act and applicable FCC regulations. Such consent, as required by the City, shall be given or denied no later than 120 days following any request, and shall not be unreasonably withheld. If the City fails to render a final decision on the request within 120 days of receiving a transfer request, such request shall be deemed approved unless the requesting party and the City agree to an extension of time. Prior consent shall be required when transferring the franchise between wholly owned subsidiaries of the same entity.

2. Ownership or Control. The grantee shall promptly notify in writing the City of any proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or transfer by any person or group of persons consisting of 20 percent or more of the beneficial ownership interest of the grantee. 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 in writing thereto, which consent shall be given or denied no later than 120 days following any request, and shall not be unreasonably withheld. If the City fails to render a final decision on the request within 120 days of receiving a transfer request, such request shall be deemed approved unless the requesting party and the City agree to an extension of time. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the City in any such inquiry. In seeking the grantee's consent to any change in ownership or control, the grantee shall have the responsibility:

A. To show to the satisfaction of the City whether the proposed purchaser, transferee, or assignee (the "proposed transferee"), which in the case of a corporation, shall include all directors and all persons having a legal or equitable interest of five percent or more of the voting stock:

(1) Within ten years before the transfer request, has been convicted or held liable for acts involving moral turpitude, including (but not limited to) any violation of Federal, State or local law or regulations, or is presently under an indictment, investigation, or complaint charging such acts;

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

(3) Previous or pending legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or operation of cable system.

B. To establish, to the satisfaction of the City, the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee which the grantee was required to submit in its franchise application, and such other data as the City may request, where the same shall be audited, certified, and qualified by a certified public accountant.

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

3. 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 the financial institution, or its designee, intend to take control and operate the cable system in the event of a grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the City in its discretion, but during said period of time it shall have the right to petition the City to transfer the franchise to another grantee. Except insofar as the enforceability of this subsection may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally, and further subject to applicable Federal, State or local law, if the City finds that such transfer, after considering the legal, financial, character, technical and other public interest qualities of the proposed transferee, is satisfactory, the City shall transfer and assign the right and obligations of such franchise as in the public interest. The consent of the City to such transfer shall be given or denied no less than 120 days after any request, and shall not be unreasonably withheld. In cases of either a transfer of the franchise or a proposed change in ownership or control of the grantee involving a wholly owned subsidiary of grantee, upon written request of the grantee, the City may waive or modify the requirements of this section. The City shall provide grantee notice of its decision on such request as soon as practicable after receipt. Notwithstanding grantee's request under this section, the 120-day period for rendering a decision on a transfer of the franchise or a change in ownership or control shall commence upon the City's receipt of grantee's notice of proposed transfer or change in ownership or control.

4. The consent or approval of the City to any transfer by the grantee shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall, by its terms, be expressly subject to the terms and conditions of any franchise.

5. In the absence of extraordinary circumstances, the City shall not approve any transfer or assignment of the franchise prior to completion of initial construction of the cable system.

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

7. The City may approve the transfer, deny the transfer with cause, or conditionally approve the transfer, provided that the City shall not unreasonably refuse to approve the transfer or condition the transfer upon unreasonable conditions. The conditions the City may attach to the transfer approval may include, but are not limited to: charges that are incidental to the awarding of the franchise, as allowed under Federal law; remedy of any existing or historical violations of City ordinances or the franchise agreement, provided that for violations occurring before the date of the transfer request, City has given notice of such violations to the grantee before City has received the transfer request; payment of all fees and penalties owed by the grantee at the time of transfer approval; and a guarantee by the proposed transferee to abide by any and all ordinances, agreements, and conditions placed upon the franchise and system by the City and existing grantee, unless mutually removed by the City and grantee.

8. When the grantee approves a transfer under this section, the new grantee shall indicate acceptance of the franchise as specified in Section 115.07, including the filing of all necessary bonds, funds, proofs of insurance, and certifications.

115.09 FRANCHISE RENEWAL.

1. The City may decide to renew a franchise granted under this chapter if the grantee files a written request for such a renewal. At the time of such request, the City may update this chapter and reevaluate the needs of the community for cable service and the performance of the grantee.

2. The applicable Federal law shall govern the procedures and standards for renewal of any franchise awarded pursuant to this chapter.

3. To the extent that the Federal law is not applicable, the City in its sole discretion and judgment shall have the right to grant, deny, or conditionally grant renewal of a franchise, provided that the City shall not unreasonably refuse to renew the franchise or unreasonably condition the renewal. The conditions the City may place on its approval include, but are not limited to: charges that are incidental to the awarding of the franchise renewal as allowed under Federal law; updating this chapter and surveying community cable needs; remedy of historical or existing violations of the franchise or this chapter, provided that for violations occurring before the date of the transfer request, City has given notice of such violations to the grantee before City has received the renewal request; payment of all fees and penalties owed by the grantee at the time of the renewal; acceptance of any updated ordinance ; and acceptance of any updated franchise agreement.

4. When the City approves a franchise renewal, the grantee shall accept the renewed franchise under the procedures set out in Section 115.07.

5. At the expiration (and denial of renewal) of a franchise, the City may, in a lawful manner and upon payment of fair market value, determined on the basis of the cable system is valued as a going concern exclusive of any value attributable to the franchise itself, obtain, purchase, acquire, take over, and hold the cable system.

115.10 FRANCHISE FEE.

1. Quarterly Franchise Payment. Grantee shall pay the City a fee of five percent of grantee's annual gross revenue or such other maximum amount as allowed by applicable law. Such payment shall commence as of the effective date of the franchise or any renewal date. The City shall be furnished, on an annual basis, a statement within 120 days of the close of the calendar year, either audited and certified by an independent certified public accountant or certified by a financial officer of the grantee, reflecting the total amount of the revenue and all payments, deductions and computations for the period covered by the payment. Upon ten days' prior written notice, City shall have the right to conduct an independent audit of grantee's records, in accordance with generally accepted accounting procedures, and if such audit indicates a franchise fee underpayment of five percent or more, the grantee shall pay the actual costs of such an audit.

2. Acceptance by City. 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 chapter or for the performance of any other obligations of the grantee.

3. Failure to Make Required Payment. 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 the City or its designee, shall accrue from the date of the required submittal at an annual rate of 12 percent.

4. Payment Schedule. The franchise fee shall be paid on a quarterly basis according to the following schedule: March shall be reflected in an April 30 payment; revenues for April through June shall be reflected in a July 30 payment; revenues for July through September in an October 30 payment; and revenues for October through December in a January 31 payment.

All cable revenues to the City shall be placed in the City's General Fund, and allocated to the telecommunication department and/or telecommunications commission at the City's discretion.

115.11 REVOCATION.

1. Grounds for Revocation. If the grantee has been given due notice and a reasonable opportunity to cure, the City reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default under this chapter and a material breach of the franchise:

A. If the grantee shall default in the performance of any of its material obligations under this chapter or under such documents, agreements, and other terms and provisions entered into by and between the City and the grantee, subject to the provisions on cure.

B. If the grantee should fail to provide or maintain in full force and effect, the liability and indemnification coverage or the security fund or bonds as required herein.

C. If any court of competent jurisdiction, or any Federal or State regulatory body by rules, decisions, or other action, determines that any material provision of the franchise documents, including this chapter, the franchise agreement and grantee's proposal is invalid or unenforceable prior to the commencement of initial system construction.

D. If the grantee ceases to provide service for a period exceeding 30 days for any reason within the control of the grantee over the cable system, or abandons the management and/or operation of the system.

E. If the grantee willfully violates any of the material provisions of this chapter or the franchise agreement or attempts to practice any fraud or deceit upon the City.

F. If the grantee becomes insolvent, or upon listing of an order for relief in favor of grantee in a bankruptcy proceeding.

G. If the grantee transfers a controlling interest of the franchise without the prior approval or consent of the City as required in Section 115.08.

2. Procedure Prior to Revocation.

A. The City shall make a written demand that the grantee comply with any requirements, limitations, terms, conditions, rules, or regulations or correct any action deemed cause for revocation. Such written demand shall detail the exact nature of the alleged noncompliance and shall provide the grantee with 30 days in which to correct the alleged noncompliance. In the event the stated violation is not corrected to the City's satisfaction within said 30 days, the City shall schedule a public hearing and notify the grantee in writing of said public hearing.

B. At the scheduled public hearing, the City shall hear any persons interested therein and shall provide the grantee with an opportunity to provide testimony and evidence. The City, following the public hearing, shall issue a written decision no sooner than 30 days following the hearing. The City shall determine, based upon the preponderance of the evidence, whether the grantee committed a material breach of this chapter or the franchise agreement and, if so, whether such breach was willful and whether said franchise shall be revoked.

C. If the City determines that the grantee has willfully committed a material breach, then the City may, by resolution, declare the franchise terminated and that the grantee's security fund and bonds be forfeited. Alternatively, the City may, at its option, direct the grantee to take appropriate remedial action within such time and under such terms and conditions as the City may prescribe in order to avoid termination of the franchise.

D. Upon revocation of the franchise, the City may, in a lawful manner and upon payment of fair market value, determined on the basis of the cable system as a going concern exclusive of any value attributable to the franchise itself, obtain, purchase, acquire, take over and hold the cable system.

115.12 PROCEDURES ON TERMINATION.

1. Disposition of Facilities. Subject to Federal, State and local laws, in the event a franchise expires, is revoked, or otherwise terminated, the City may order the removal of the above-ground system facilities from the franchise area within a reasonable period of time as determined by the City or require the

original grantee to maintain and operate its cable system for a period not to exceed 24 months as indicated in subsection 4 of this section.

2. Restoration of Property. In removing its plant, structures, and equipment, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the grantee's removal of its plant, structures, and equipment without affecting the electrical or telephone cable wires, or attachments. The grantee's insurance, indemnity obligations, performance bonds and security funds required by this chapter and by the franchise agreement shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this section.

3. Restoration by City; Reimbursement of Costs. In the event of a failure by the grantee to complete any work required by subsection 1 of this section and/or subsection 2 of this section, or any other work required by City by law or ordinance, within 30 days after receipt of written notice, and to the satisfaction of the City, the City may cause such work to be done and the grantee shall reimburse the City the cost thereof within 30 days after receipt of an itemized list of such costs or the City may recover such costs through the security fund or bonds provided by grantee. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

4. Extended Operation. Subject to Federal, State and local law, upon either the expiration or revocation of a franchise, the City may require the grantee to continue to operate the cable system for a defined period of time not to exceed 24 months from the date of such expiration or revocation. The grantee shall, as trustee for its successor in interest, continue to operate the cable communications system under the terms and conditions of this chapter and the franchise agreement and to provide the regular cable service and any of the other services that may be provided at that time.

5. City's Rights Not Affected. The termination and forfeiture of any franchise shall in no way affect any of the rights of the City under any provision of law.

115.13 RECEIVERSHIP, CONDEMNATION, AND FORECLOSURE.

1. Operation by Receiver. Any franchise granted shall, at the option of the City, cease and terminate 120 days after the appointment of a receiver or receivers or trustee or trustees designated to take over and conduct the business of the grantee, whether in a receivership, reorganization, condemnation, bankruptcy, or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

A. Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within said 120 days shall have remedied all defaults under the franchise; and

B. Such receivers or trustees shall, within said 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of the franchise agreement.

2. Involuntary Sale. In the case of a foreclosure or other involuntary sale of the plant, property and equipment of the grantee, or any part thereof, the City may serve notice of termination upon the

grantee and to the purchaser at such sale, in which event the franchise and rights and privileges of the grantee hereunder shall cease and terminate 30 days after service of such notice, unless:

A. The City shall have approved the transfer of the franchise, as and in the manner in this chapter provided; and

B. Such successful purchaser shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of the franchise agreement.

115.14 FRANCHISE PROCESSING COSTS.

1. **New Franchises.** For a new franchise awarded, the costs to be borne by the grantee include (but are not limited to) all costs of publication of notices prior to any public meeting, publication of relevant ordinances and franchise agreements, costs incurred by the City in its study, preparation of proposal solicitation documents, and evaluation of all applications. A nonrefundable franchise filing fee shall be paid to the City in the amount of \$1,000.00.

2. **Franchise Renewal.** For a franchise renewal, the grantee shall reimburse the City the actual cost of preparation of notices, publication of notices, publication of relevant ordinances and franchise agreements, not to exceed \$5,000.00. The City shall assume and be bound by all the terms and conditions of the franchise agreement.

3. **Franchise Transfer.** For a franchise transfer, the grantee shall reimburse the City the actual cost of preparation of notices, publication of notices, publication of relevant ordinances and franchise agreements, not to exceed \$5,000.00.

4. **Taxes.** Subject to Federal and State law, the grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees, and other 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.

5. **Other Costs.** The processing costs provided for in this section shall be in addition to any other inspection or permit fee or other fees due to City under any other ordinance .

115.15 AUTHORITY FOR USE OF STREETS.

1. **Use of Streets.** For the purposes of operating and maintaining a system in the City, grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, across, and along the streets within the City, lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the system, provided that all applicable permits are applied for and granted, all fees paid, and all other City codes and ordinances otherwise complied with. However, no rights hereunder may be transferred by grantee to any other entity except grantee's construction agents.

2. **Filing Plans.** Prior to construction or alteration, grantee shall in each case file plans with all appropriate City departments and receive written approval of such plans, which approval shall not be unreasonably withheld. Grantee shall provide in writing a monthly progress report to City through the completion of construction or alteration.

3. Noninterference. Grantee shall construct and maintain the system so as not to interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to grantee whenever practicable. Grantee shall notify all residents directly affected by proposed construction prior to the commencement of that work.

4. Denial of Use by City. Notwithstanding the above grant to use the streets, no street shall be used by grantee if City in its sole opinion, determines that such use is inconsistent with the conditions or provisions by which such street was created or dedicated, or presently used.

115.16 CONDITIONS ON USE OF STREETS.

1. Limit Interference. All transmission and distribution, structures, lines, and equipment erected by grantee within the City shall be so located as to cause minimum interference with the proper use of streets and other public places and the rights and reasonable convenience of property owners who adjoin such streets and other public places.

2. Restoration of Streets. In case of disturbance of any street or public place, the grantee shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore such area in as good a condition as before the work involving such disturbance was done.

3. Tree Trimming. The grantee shall comply with the provisions of Chapter 150 of this Code of Ordinances. Each grantee shall be responsible for, shall indemnify, defend, and hold harmless the City and its officers, agents, and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of, or injury to any tree or trees proximately caused by the grantee or its officers, agents, employees, contractors, or subcontractors.

115.17 ERECTION OF POLES.

1. Consent to Erection of Poles. No franchise shall be deemed to expressly or implicitly authorize the grantee to construct or install poles or wire-holding structures within streets for the purpose of placing cables, wires, lines, or otherwise without the written consent of the City. Such consent shall be given upon such terms and conditions as the City Engineer may prescribe, which shall include a requirement that the grantee perform, at its sole expense, all tree trimmings required to maintain the poles clear of obstructions.

2. The grantee may lease, rent, or in any other manner by mutual agreement obtain the use of towers, poles, lines, cables, and other equipment and facilities from utility companies operating within the City, and use towers, poles, lines, cables, and other equipment and facilities for the system. When and where practicable, the poles used by the grantee's distribution system shall be those erected and maintained by such utility companies operating within the City, provided mutually satisfactory rental agreements can be reached. It is the City's desire that all holders of public franchises in the City cooperate with the grantee and allow the grantee the use of their poles and pole line facilities whenever possible so that the number of new or additional poles installed in the City may be minimized.

3. Access to Poles. With respect to any poles or wire holding structures which a grantee is authorized to construct and install within streets, a public utility serving the City may, if denied the privilege of utilizing such poles or wire-holding structures by the grantee, apply for such permission to the Public Works Director. If the Public Works Director finds that such use would enhance the public convenience

and would not unduly interfere with the grantee's operations, the Public Works Director may authorize such use subject to such terms and conditions as the Public Works Director deems appropriate. Such authorization shall include the condition that the public utility pay to the grantee any and all actual and necessary costs incurred by the grantee in permitting such use. Nothing herein shall be construed as a right for the grantee to utilize public utility property.

115.18 UNDERGROUND INSTALLATION.

1. Underground Installation Required. Except as hereinafter provided, in all areas of the City where the cables, wires, and other like facilities of a public utility are placed underground, each grantee shall construct and install its cables, wires, and other facilities underground at time of construction unless it is impossible or impractical to do so due to weather or other conditions beyond the control of the grantee, upon written request from the City. Such cable wire could remain above ground. The grantee must install the wire as soon as conditions permit and no later than six months after original installation. Amplifier boxes and pedestal mounted terminal boxes may be placed aboveground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. In any area of the City where there are certain cables, wires, and other like facilities of a public utility underground and at least one operable cable, wire, or like facility of a public utility is suspended above the ground from poles, a grantee may construct and install its cables, wires, and other facilities from the same pole with permission of the utility company which owns the poles.

2. Relocation Underground. With respect to any cables, wires, and other like facilities constructed and installed by a grantee above ground, the grantee shall, at its sole expense, reconstruct and reinstall such cables, wires, or other facilities underground pursuant to any project under which the cables, wires, or other like facilities of all like utilities are placed underground within an area.

115.19 RELOCATION.

If, during the term of a franchise, the City, a public utility, a sanitary district or any other similar special district elects to alter, repair, realign, abandon, improve, vacate, reroute, or change the grade of any street or to replace, repair, install, maintain, or otherwise alter any aboveground or underground cable, wire, conduit, pipe, line pole, wire-holding structure, or other facility utilized for the provisions of utility or other services or transportation or drainage, sewage or other liquids, the grantee shall, except as otherwise hereinafter provided, at its sole expense, remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed. If such removal or relocation is required within the subdivision in which all utility lines, including those for the system, were installed at the same time, the entities may decide among themselves who is to bear the cost of relocating; provided, the City shall not be liable to a grantee for such costs. Reasonable advance written notice shall be mailed to the grantee advising the grantee of the date or dates that the removal or relocation is to be undertaken.

115.20 PLACEMENT OF BUILDINGS.

Each grantee shall, upon request by any person holding a building moving permit or other approval issued by the City, temporarily remove, raise, or lower its wires to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the persons requesting same, unless if requested by the City, in which case there shall be no reimbursement to grantee. Grantee shall be

authorized to require such payment in advance. A grantee shall be given not less than 30 days' written notice to arrange for such temporary wire changes.

115.21 SYSTEM DESIGN AND CONSTRUCTION.

1. System Design. A cable system shall comply with the terms specified in the franchise agreement. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in Section 115.04 of this chapter. Cable system construction and provision of service shall be nondiscriminatory and grantee shall not delay or deter service to any section of the franchise area on the grounds of economic preference.

2. System Construction Schedule.

A. Grantee shall comply with the requirements of the system construction or upgrade schedule contained in the franchise agreement.

B. Grantee shall provide a detailed construction or upgrade plan indicating progress schedules, area construction maps, test plan, and projected dates for adding service. In addition, grantee shall update this information on a monthly basis, by submitting a copy of its normal internal progress reports, showing specifically whether schedules are being met and the reason for any delays.

3. All Channels Emergency Alert. The grantee shall, in the case of any emergency or disaster, make its entire system available without charge to the City or to any other governmental or civil defense agency that the City shall designate. The system shall be engineered to comply with the emergency alert system requirements of federal law and FCC regulations and the franchise agreement. The franchising authority shall hold the grantee, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorney's fees and costs.

4. Power Outage. As specified in the franchise, the grantee will install a back-up generator at its head end that will provide the needed power to generate the head end in the event of a power outage.

5. Subscribers Control.

A. Switching Device. The grantee, upon request from any subscriber, shall install, at cost, a switching device to permit a subscriber to continue to utilize the subscriber's television antenna. The grantee shall not require the removal (or offer to remove) any subscriber's antenna lead-in wire.

B. Parental Control Devices. Grantee shall provide to subscribers, upon request, parental control devices that allow any channel or channels to be locked out. Such devices shall block both the video and audio portion of such channels to the extent that both are unintelligible. The lockout device described herein shall be made available to all subscribers requesting it, beginning on the first day that any cable service is provided.

6. Interconnection. The cable system shall be designed to be interconnected with other adjacent systems. At a minimum, the system shall be capable of interconnection with the access channel programming to other adjacent systems.

115.22 CONSTRUCTION STANDARDS.

1. Each grantee shall construct, install, and maintain its system in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the FCC. Each grantee shall provide to the City written reports of the grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.
2. Each grantee shall at all times comply with the National Electrical Safety Code (established by the National Bureau of Standards); National Electrical Code; National Bureau of Fire Underwriters; applicable FCC and other Federal, State, and local regulations; and codes and other ordinances of the City.
3. In any event, the system shall not endanger or interfere with the safety of persons or property within the City or other areas where the grantee may have equipment located.
4. All working facilities, conditions, and procedures used or occurring during construction and maintenance of the system shall comply with the standards of the Occupational Safety and Health Administration.
5. Construction, installation, and maintenance of the system shall be performed in an orderly and workmanlike manner and in close coordination with public and private utilities serving the City, following accepted construction procedures and practices and working through existing committees and organizations.
6. All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
7. Any antenna structure used in the system shall comply with construction, marking, and lighting of antenna structures required by the United States Department of Transportation.
8. RF leakage shall be checked by grantee at reception locations for emergency radio services so as to prove no interference signal combinations are possible.
9. Radiation shall be measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no interference to air navigational reception.
10. The City shall have the right to inspect all construction or installation work performed subject to the provisions of this chapter and to make such inspections as it shall find necessary to ensure compliance with the terms of this chapter and other pertinent provision of law.

115.23 TECHNICAL STANDARDS.

1. Standards. The cable communications system shall meet all technical and performance standards contained in the franchise agreement and as required by the FCC.
2. Test and Compliance Procedure. The grantee shall submit, within 60 days after the effective date of the franchise agreement, a detailed test plan describing the methods and schedules for testing the cable system on an ongoing basis to determine compliance with the provisions of the franchise agreement. The tests for basic cable service shall be performed at intervals no greater than 12 months. The tests may be witnessed by representatives of the City, and comprehensive written test reports shall

be submitted to the City. If any of the locations tested fail to meet the performance standards, the grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated. A second failure of the location tested may be considered breach of the franchise agreement.

3. Special Tests. At any time after commencement of service to subscribers, the City may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to grantee or to the subscriber.

4. Costs of Tests. The costs of all tests required by subsections 2 and 3 of this section, and re-testing as necessary, shall be borne by the grantee, except that if City requires the utilization of outside consultants or test personnel, such costs shall be borne by the City.

115.24 SERVICES.

1. Service Provided. The grantee shall provide, at a minimum, the initial services listed in the franchise agreement. Services shall not be reduced without prior notification to City.

2. Basic Cable Service. The "basic cable service" shall include any service tier which includes the retransmission of local television signals. This service shall be provided to all subscribers at the established monthly subscription rates.

3. PEG Facilities and Access Channel. Grantee shall provide channels for use by the City for public educational, and government (PEG) programming use, as specified in the franchise agreement. Grantee will also provide to City, at no charge, technical and engineering assistance in the development by City of PEG access facilities. Any modulating or distribution equipment, interface equipment and cabling to permit operation will be at the expense of the grantee.

4. Cable Channel for Local and Leased Commercial Use. The grantee shall designate channel capacity for local and leased commercial use as required by the Act and applicable law.

5. Cable Service to City. Grantee shall, at its own expense and upon written request of the City, provide and maintain one connection for basic cable service to each City office building, public and private school, library, police station, and fire station within the corporate limits of the City. Grantee is not responsible for providing the distribution system within any of such places and is not required to bear the expenses or costs of any installation necessary for such purpose beyond a 500-foot drop. Such additional cost shall be borne by the requesting institution or location.

115.25 CONSUMER SERVICE STANDARDS.

Nothing in this chapter shall be construed to prevent or prohibit: (i) the City and the grantee from agreeing to exceed the customer service standards set forth herein; (ii) the establishment or enforcement of any State or municipal law or regulation concerning customer service or consumer protection that imposes customer service or consumer protection requirements that exceed the standards set forth herein, or address matters not addressed herein. The grantee shall maintain a local

office to provide the necessary facilities, equipment, and personnel to comply with the following consumer standards under normal conditions of operation:

1. **Subscribers' Antennas.** The grantee shall not require the removal of 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.
2. **Disconnections.** There shall be no charge for disconnection of any installation or outlet. If any subscriber fails to pay a fee or charge, the grantee may disconnect the subscriber's service. Such disconnection shall not be effected until the subscriber has been given 15 days' advance written notice of the intention to disconnect. After disconnection, upon payment of any required delinquent fee or reconnection charge, the grantee shall promptly reinstate the subscriber's service.
3. **Reconnections.** Grantee shall restore service to customers upon requesting service, provided customer shall first satisfy any previous obligations owed.
4. **Downgrades.** Subscribers shall have the right to have cable service disconnected or downgraded in accordance with FCC rules. The billing for such service will be effective immediately and such disconnection or downgrade shall be made as soon as practicable. A refund of unused service charges shall be credited to the customer's account or paid to the customer within 45 days from the date of termination of service.
5. **Channel Card.** The grantee shall prepare and make available at no charge to the subscribers, an accurate and up-to-date channel and radio frequency card listing the cable frequencies and channels of any FM radio, and television signals, and services available over the cable system. The channel card shall be distributed to every subscriber, at least once each year, and within 30 days after a change or addition in channels or frequency uses or services offered.
6. **Service Repair Standards.** The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled service interruptions, shall be preceded by notice, and shall occur during periods of minimum use of the system. A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all service interruptions and requests for cable service as required by this chapter.
7. **Regional Customer Service Center.** Grantee shall maintain a regional customer service center with a toll free telephone number for the purpose of receiving inquiries, requests, and complaints concerning all aspects of the establishment, construction, maintenance, and operation of the system. The regional customer service center shall be open during normal business hours.
8. **Installation Staff.** An installation staff shall install service to any subscriber located up to 250 feet from the existing distribution system within seven days after receipt of a request. This standard shall be met no less than 95 percent of the time, measured on a quarterly basis.
9. **Notification of Service Interruption to City Administrator.** The grantee shall promptly notify the City Administrator, in writing, or if appropriate, by oral communication, of any significant interruption in the operation of the system. For the purposes of this section, a "significant interruption in the operation of the system" means any interruption of sound or picture on one or more channels of a duration of at least 18 hours to at least five percent of the subscribers.

10. Customer Satisfaction Surveys. The Telecommunications Commission may periodically develop and distribute customer satisfaction and service surveys. The grantee shall cooperate and assist with the publication and mailing of such surveys. Each questionnaire shall be prepared and conducted in good faith so as to provide reasonably reliable measures of subscriber satisfaction with: (i) audio and signal quality; (ii) responses to subscriber complaints; (iii) billing practices; (iv) programming services; and (v) installation practices.

11. FCC Rules. The grantee shall conform with FCC Rules.

115.26 PROOF OF COMPLIANCE.

1. Compliance Records. Upon reasonable notice, grantee shall demonstrate compliance with any or all of the standards required by this chapter. Grantee shall provide sufficiently detailed information to permit City to readily verify the extent of compliance.

2. Breach for Noncompliance. A repeated and verifiable pattern of noncompliance with the consumer protection standards contained in this chapter or franchise agreement, after grantee's receipt of due notice and an opportunity to cure, may be termed a breach of franchise, subject to any and all remedies prescribed in this chapter, the Cable Act and applicable law. The grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards contained in this chapter or franchise agreement, unless a historical record of complaints indicates a clear failure to comply.

115.27 COMPLAINT PROCEDURES.

1. Complaints to Grantee. Grantee shall establish written procedures for receiving, acting upon, and resolving subscriber complaints without intervention by the City. The procedures shall prescribe the manner in which a subscriber may submit a complaint, either orally or in writing. Grantee shall complete its investigation of a subscriber's complaint within ten days after receiving the complaint, and grantee shall notify the subscriber of the results of the investigation and its proposed action or resolution, if any, within two business days. The grantee shall also notify the subscriber of the subscriber's right to file a complaint with the City in the event the subscriber is dissatisfied with the grantee's decision.

2. Complaints to City. A subscriber who is dissatisfied with grantee's proposed decision shall be entitled to have the complaint reviewed by the City. The subscriber shall initiate the review by filing a written complaint, together with the grantee's decision, if any, with the City, and by the City notifying the grantee of the filing. The subscriber shall make such filing and notification within 20 days of receipt of grantee's decision or, if no grantee decision has been provided, within 30 days after filing the original complaint with grantee. The City may extend these time limits for reasonable cause.

3. Review by the City. The City shall determine, upon a review of a subscriber complaint and the grantee's decision, if any, whether further action is warranted. In the event the City does not initiate further proceedings within 60 days of the filing of the complaint, the grantee's proposed action or resolution shall be final. If the City decides to initiate further investigation, the City shall require the grantee and the subscriber to submit, within 15 days of notice thereof, a statement of the facts and arguments in support of their respective positions. The City shall issue a written decision within 15 days

of receipt of the statements or, if a hearing is requested, within 30 days of the conclusion of the hearing, setting forth the basis of the decision.

4. Remedies for Violation. The City may, as a part of a subscriber complaint decision issued under the provisions of this chapter, impose civil penalties on the grantee, following written notice and 30 days to cure, following receipt of said notice. Upon grantee's request, before imposition of such penalties, City shall schedule a public hearing at which grantee may present testimony and evidence and examine witnesses and the complainant.

115.28 SUBSCRIBER NOTICE.

1. Operating Policies. As subscribers are connected or reconnected to the cable system, and at least annually, and at any time upon request, and when grantee's procedures change, under normal operating conditions, the grantee shall provide each subscriber with written information concerning products and services offered, prices and options for programming services and conditions of subscription to programming and other services, installation and service maintenance policies, instructions on how to use the cable services, channel positions of programming carried on the system, the procedures for billing and 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 also furnish information concerning the City office responsible for administration of the franchise including the name and telephone number of the office. The notice shall also indicate grantee's business hours, legal holidays, and procedures for responding to inquiries after normal business hours. The grantee shall provide all subscribers and the City written notice no less than 30 days prior to any proposed change in these policies.

2. A grantee, under normal operation conditions, shall provide all subscribers and the City with notice of any change in rates, programming services, or channel positions at least 30 days prior to the changes using any reasonable written means at its sole discretion. A grantee is not required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge imposed by a Federal agency, State, or City on the transaction between the grantee and subscribers.

3. Billing. Bills shall be clear, concise, and understandable and shall include the grantee's toll-free or collect telephone number. Bills shall be fully itemized, with itemizations, including (but not limited to) basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the grantee shall respond to a written complaint from a subscriber within 30 days. Refund checks will be issued promptly, and no later than either (i) the customer's next billing cycle following resolution of the request or 30 days, whichever is earlier, or (ii) the return of the equipment supplied by the grantee if service is terminated. Credits for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

4. Copies to City. Copies of all notices provided to subscribers shall be filed concurrently with the City.

115.29 QUALITY OF SERVICE.

The overall quality of service provided by grantee to subscribers may be subject to evaluation by City, not less often than once annually. In addition, City may evaluate the quality of service at any time, based upon the number of subscriber complaints received by the grantee and the City, and grantee's response to those complaints. City's evaluation that service quality is inadequate may lead to direction of grantee to cure the inadequacies. Grantee shall commence corrective action within 30 days after receipt of written notice. Failure to do so shall be deemed a breach of the franchise and subject to the remedies prescribed in this chapter. The City, after due process, may utilize the performance bond and/or security fund provided for in this chapter to remedy any such franchise breach.

115.30 TENANT'S RIGHTS.

Grantee shall be required to provide service to tenants in individual units of a multiple housing facility with all services offered to other dwelling units within the franchise area, so long as the owner of the facility consents in writing, if requested by grantee, to the following:

1. Grantee's providing the service to units of the facility;
2. Reasonable conditions and time for installation, maintenance, and inspection of the system on the facility premises;
3. Reasonable conditions promulgated by grantee to protect grantee's equipment and to encourage widespread use of the system; and
4. No discrimination in rental charges, or otherwise, between tenants who receive cable service and those who do not.

115.31 RIGHTS OF INDIVIDUALS.

1. **Discrimination Prohibited.** Grantee shall not deny service, access, or otherwise discriminate against subscribers, PEG access channel users, or general citizens on the basis of income, race, color, religion, national origin, age, gender, marital status or physical or mental disability. Grantee shall comply at all times with the Cable Act and all other applicable Federal, State and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are incorporated and made part of this chapter by reference.
2. **Equal Employment.** Grantee shall strictly adhere to the equal employment opportunity requirements of Federal, State and local law and regulations in effect on the date of the franchise grant, and as amended from time to time.
3. **Personal Information.** The grantee's policy with regard to personally identifiable information shall be consistent with Federal law.
4. **Equal 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, and other entities having a legitimate use for the system, and no one shall be arbitrarily excluded from its use.
5. **Discontinuation of Service.**

A. If a subscriber fails to pay any proper fee or charge for any service, the grantee may discontinue said service, provided that the subscriber has been given no less than 15 days' prior notice of the intention to discontinue service.

B. If the grantee receives payment of all outstanding fees and charges, including any late charges, prior to the expiration of the 15th day after transmittal of said notice from the grantee, then the grantee shall not discontinue said service.

C. After any service has been discontinued, upon request of the subscriber accompanied by payment in full of all fees or charges due the grantee and the payment of an appropriate reconnection charge, if any, the grantee shall promptly reinstate said service.

Subscribers and users shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the grantee is notified to terminate service. The subscriber shall not be charged any fee for the cancellation of cable service. Grantee may charge reasonable fees for service downgrades as permitted under the Cable Act and FCC Regulations.

6. Private Easements. No cable, line, wire, amplifier, converter, or other piece of equipment owned by the grantee shall be installed by the grantee within private easements without first securing the written permission of the owner of the property involved, unless otherwise permitted under Federal law.

115.32 CONTINUITY OF SERVICE.

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

2. Right of City to Operate System. In the event grantee fails to operate the system for seven consecutive days without prior approval of the City or without just cause, the City may, working in conjunction with any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise, operate the system or designate an operator until such time as grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the grantee, then during such period as the City fulfills such obligation, the City shall be entitled to collect all revenues from the system, and the grantee shall reimburse the City for all reasonable costs or damages in excess of the revenues collected by the City that are the result of the grantee's failure to perform.

115.33 RECORDS.

1. The City, upon reasonable notice, shall have the right to inspect at any time during normal business hours, all books, records, maps, plans, service complaint logs, performance test results and other like

materials of the grantee which relate to the regulation of the franchise and are maintained at the local office required by ordinance or franchise agreement, provided that the City shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the grantee and provided further, that records shall be exempt from inspection pursuant to this section to the extent required by applicable law regarding subscriber privacy and to the extent such records are protected by law against discovery in civil litigation. If any such books or records are not kept by the local office, or upon reasonable request made available to the City, and if the City shall determine that an examination of such records is necessary or appropriate to the performance of any of City's duties, then grantee shall make such records available locally.

2. The grantee shall at all times maintain the complaint files required by this chapter, and a full and complete set of plans, records, and "as-built" maps showing the exact location of all cable system equipment installed or in use in the franchise area, exclusive of subscriber service drops.

115.34 REGULATORY AUTHORITY.

The City shall exercise regulatory authority under the provisions of this chapter, the Cable Act, and applicable law. If the franchise area served by the cable system also serves other contiguous or neighboring communities, the City may, at its sole option, participate in a joint regulatory agency, with delegated responsibility in the area of cable and related communications.

115.35 REGULATORY RESPONSIBILITY.

The City, acting alone or acting jointly with other cities, may exercise or delegate the following regulatory responsibilities:

1. Administering and enforcing the provisions of the cable communications system franchises;
2. Coordinating the operation of public educational and government (PEG) access channel and facilities;
3. Providing technical, programming, and operational support to public agency users, such as government departments, schools, and health care institutions;
4. Establishing procedures and standards for use of channels dedicated to public use and sharing of public facilities;
5. Planning expansion and growth of public benefit cable services;
6. Analyzing the possibility of integrating cable communications with other local, regional or national telecommunications networks;
7. Formulating and recommending long-range telecommunications policy.

115.36 PUBLIC USAGE OF THE SYSTEM.

1. The City may utilize a portion of the cable communication system capacity, and associated facilities and resources, to develop and provide cable services that will be in the public interest. In furtherance of this purpose, the City may authorize the North Liberty Telecommunications Commission to establish a nonprofit corporation or other entity to receive and allocate PEG and institutional network facilities,

support funds, and other considerations provided by the City, the grantee, and/or others. Such an entity, if established, may be delegated the following responsibilities:

A. Receive and utilize or reallocate for utilization, channel capacity, facilities, funding, and other support provided specifically for PEG and institutional network usage of the cable communications system.

B. Establish, in consultation with the grantee, operational procedures and guidelines for PEG and institutional network usage.

C. Review the status and progress of each service developed for public benefit.

D. Reallocate resources jointly with the grantee on a periodic basis to conform to changing priorities and public needs.

E. Report to the City and the grantee annually on the utilization of resources, the new public services developed, and the benefits achieved for the City and its residents.

2. The grantee shall make available leased access in compliance with Section 532 of the Act and applicable FCC regulations.

115.37 RATES.

The grantee shall establish rates for its services which shall be applied on a nondiscriminatory basis in the service area, except for commercial and bulk account rates, which are negotiated individually. Grantee may establish a non-uniform rate structure for cable services for which rates are deregulated under Federal law. Pursuant to Federal law, the City reserves the right to assume regulation of rates paid by cable subscribers; such rate regulation shall be performed by the North Liberty Telecommunications Commission as advisory to the Council in accordance with FCC Rules and Regulations Part 76, Subpart N. As specified by the FCC's Rules (Part 76, Subpart N), such rate regulation shall cover basic service rates and customer premises installations and equipment rates (including charges for, but not be limited to: converter boxes, remote control units, connections for additional television receivers, and other cable home wiring). The City reserves the right to further regulate rates pursuant to any additional powers granted it by either the FCC or Federal or State law.

1. Rate Regulatory Procedures. In the event that rate regulatory powers are assumed by City, the following shall apply:

A. The City shall notify the grantee of City's FCC certification and of City's adoption of rate regulations which are consistent with the FCC regulations and which provide for a reasonable opportunity for consideration of the views of interested parties.

B. Upon receipt of such notification by grantee, basic service regulation shall become effective. Before any proposed adjustment to basic service rates, grantee shall, within 30 days before such proposed rate increase becomes effective, submit for review its basic service, installation, and equipment rates and supporting documentation using the applicable FCC calculations and forms.

2. Proprietary Information. To aid in the evaluation of the grantee's proposed rates, the North Liberty Telecommunications Commission may require the production of proprietary information, and in

such cases will apply procedures analogous to those set forth in FCC Regulations (47 C.F.R. Sec. 0.459) and consistent with Federal and State law.

3. Refunds. As specified in the FCC regulations, the Telecommunications Commission may recommend to the Council that the grantee refund to subscribers that portion of previously paid rates which have been found to be unreasonable. Before recommending that the grantee refund previously paid rates to subscribers, the Telecommunications Commission must give the grantee notice and opportunity to comment.

4. Basic Service Rate Increases and Equipment Charges. All subsequent requests by the grantee for increases in equipment charges and/or basic service rates shall be subject to the procedures outlined in this section.

5. Service Disconnection. A subscriber shall have the right to have his/her service completely disconnected without charge, which shall include the removal of any equipment owned by the grantee from the subscriber's residence. Such disconnection shall be made as soon as practicable and in no case later than 30 days following written notice to the grantee of same. No grantee shall enter into any agreement with a subscriber which imposes any charge following complete disconnection of service, except for reconnection and subsequent monthly or periodic charges, and those charges shall be no greater than charges for new customers. This section shall not prevent a grantee from refusing service to any person because of the grantee's prior accounts with that person which remain due and owing. Grantee may charge reasonable charges for service downgrades.

6. Subscriber Complaints. Subscribers may file complaints with the City regarding a grantee's expanded tier rates that are subject to regulation by the FCC by submitting written comments to the Clerk's office. Such complaints must be received within 90 days after the effective date of the new rate.

115.38 PERFORMANCE REVIEW.

At City's sole option, the City may hold a public hearing at which the grantee shall be present and shall participate to review the performance and quality of service of the cable system. The report required in this chapter regarding subscriber complaints, the records of performance tests, and the opinion survey reports shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

1. Performance Report. Within 30 days after the conclusion of the public hearing, City shall issue a report with respect to the adequacy of system performance and quality of service. If inadequacies are found, City may direct grantee to correct the inadequacies within a reasonable period of time.

2. Breach Upon Failure to Cure. Failure of grantee, after due notice, to correct the inadequacies, shall be considered a breach of the franchise, and City may, at its sole discretion, exercise any remedy within the scope of this chapter considered appropriate.

115.39 SYSTEM REVIEW.

To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced modern system, the following system and services review procedures are established:

1. At City's sole option, the City may hold a public hearing, at which the grantee shall be present and shall participate, to review the cable communication system and service.

2. Grantee shall submit a report to the City within 45 days of City's request, indicating the following:

A. All developments and improvements in other cable systems owned or operated by the grantee, excluding tests and demonstrations.

B. Any specific plans for provision of such new services by the grantee, or a justification indicating why grantee believes that such services are not feasible for the franchise area.

3. Topics for discussion and review at the system and services review hearing include, but are not limited to, services provided, feasibility of providing new services, application of new technologies, system performance, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints, and the community's cable -related future needs and interests.

4. Either the City or the grantee may select additional topics for discussion at any review hearing.

115.40 ANNUAL REPORTS.

Upon written request of the City, within 120 days after the close of grantee's fiscal year, the grantee will be required to submit a written annual report, in a form requested by the City, including (but not limited to) the following information:

1. A summary of the previous year's (or in the case of the initial report year, the initial year's) activities in development of the cable system, including (but not limited to) services begun or discontinued during the reporting year, and the number of subscribers for each class of service;

2. A revenue statement, audited by an independent certified public accountant, or certified by an officer of the grantee;

3. A statement of projected construction, if any, for the next two years;

4. A list of grantee's officers, members of its council of directors, and other principals of grantee;

5. A list of stockholders or other equity investors holding five percent or more of the voting interest in the grantee and its parent, subsidiary, and affiliated corporations and other entities, if any, unless the parent is a public corporation whose annual reports are publicly available. A prospectus is requested but does not necessarily satisfy requirements in this section.

115.41 SYSTEM SURVEY REPORTS.

Along with the annual report required by this chapter, upon City's request, the grantee shall submit to the City an annual system survey report which shall be a survey of the grantee's plans and a report thereon. Said report shall include, but not be limited to, a description of and "as-built" maps of the portions of the franchise area that have been cabled and of all services available and an appropriate engineering test report or evaluation including suitable electronic measurements conducted in conformity with such requirements. Said report shall be in sufficient detail to enable the City to ascertain that the service requirements and technical standards of the franchise are achieved and maintained.

115.42 COMPLAINT FILE AND REPORTS.

An accurate and comprehensive file shall be kept by the grantee for 18 months of any and all written or documented complaints regarding the cable system. Grantee shall establish a procedure to remedy complaints quickly and reasonably to the satisfaction of the City. Complete records of grantee's actions in response to all complaints shall be kept.

1. A summary of service requests, identifying the number and nature of the requests and their disposition, shall be completed for each month and submitted quarterly when requested in writing by the City.
2. Grantee shall maintain a log and summary of all major service outages within the preceding three years.

115.43 OTHER REPORTS AND INSPECTIONS.

In addition to other reports or inspections provided by this chapter, grantee shall provide the following reports to or permit the following inspections by City:

1. Copies of Federal and State Reports. The grantee may be required to submit to the City copies of all pleadings, applications, notifications, communications, and documents of any kind, submitted by the grantee to – as well as copies of all decisions, correspondence, and actions by – any Federal, State, and local courts, regulatory agencies, and other government bodies relating to its cable television operations within the franchise area. Grantee shall submit such documents to the City no later than 30 days after receipt of a City request.
2. Public Reports. A copy of each of grantee's annual and other periodic public financial reports and those of its parent, subsidiary, and affiliated corporation and other entities, as the City requests, shall be submitted to the City within 30 days after receipt of a request.
3. Miscellaneous Reports. Grantee shall submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require.
4. Inspection of Facilities. The grantee shall allow the City to make inspections of any of the grantee's facilities and equipment at any time upon at least ten days' notice, or in case of emergency, upon demand without prior notice, to allow City to verify the accuracy of any submitted report.
5. Public Inspection. All reports subject to public disclosure shall be available for public inspection at a designated local grantee office during normal business hours.
6. Failure to Report. The willful refusal, failure, or neglect of the grantee to file any of the reports reasonably required, or such other reports as the City reasonably may request, may be deemed a breach of the franchise, and may subject the grantee to all remedies, legal or equitable, which are available to the City under the franchise or otherwise.
7. False Statements. Any materially false or misleading statement or representation made knowingly and willfully by the grantee in any report required under the franchise may be deemed a breach of the franchise and may subject the grantee to all remedies, legal or equitable, which are available to the City under the franchise or otherwise.

8. Cost of Reports. One copy of all reports and records required under this or any other section shall be furnished at the sole expense of the grantee.

115.44 REMEDIES FOR FRANCHISE VIOLATIONS.

If the grantee fails to perform any material obligation under the franchise, or fails to do so in a timely manner, the City may, at its option, bring civil action, and/or seek remedies as provided in franchise agreement. The City may:

1. Assess against the grantee monetary damages up to the limits established in the franchise agreement for material franchise violations, said assessment to be collected by City after completion of the procedures specified in Section 115.11 of this chapter. The amount of such assessment shall be deemed to represent liquidated damages actually sustained by City by reason of grantee's failure to perform. Such assessment shall not constitute a waiver by the City of any other right or remedy it may have under the franchise or under applicable law, including without limitation, its right to recover from grantee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by City by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from City's right to enforce the provisions of the construction and performance bonds provided for in this chapter and is intended to provide compensation to City for actual damages.

2. Terminate the franchise, for any of the causes stated in this chapter.

3. No remedy shall be imposed by City against grantee for any violation of the franchise without grantee being afforded due process of law, as provided for in the franchise agreement.

4. If the grantee fails to perform any material obligations under the franchise, City may assess monetary damages against the grantee. Grantee shall be provided due process of law as provided in the franchise agreement and applicable local, State, Federal laws and FCC Rules and Regulations prior to any actual assessments of monetary damages.

115.45 NONPERFORMANCE EXCUSED.

In the event grantee's performance of any of the terms, conditions, obligations, or requirements of the franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided grantee has notified City within a reasonable time after grantee's discovery of the occurrence of such an event. Such causes beyond grantee's reasonable control or not reasonably foreseeable shall include, but are not limited to, acts of nature and civil emergencies.

115.46 CONSTRUCTION BOND.

1. Requirement of Bond. Within 30 days after the granting of a new franchise, or a renewal which requires significant system construction, and prior to the commencement of any construction work by the grantee, the grantee shall file with the City a construction bond in the amount specified in the franchise agreement in favor of the City and any other person who may claim damages as a result of the breach of any duty by the grantee assured by said bond.

2. Form of Bond. Such bond as contemplated herein shall be in the form approved by the City and shall, among other matters, cover the cost of removal of any properties installed by the grantee in the event said grantee shall default in the performance of its franchise obligations.

3. No Limitation on Liability. In no event shall the amount of said bond be construed to limit the liability of the grantee for damages.

4. Waiver of Bond. The City, at its sole option, may waive this requirement, or permit consolidation of the construction bond with the performance bond specified in Section 115.47.

5. Release of Bond. Upon completion of construction, any construction bonds then in force shall be released.

115.47 PERFORMANCE BOND.

1. The City may require any successor, assignee, or transferee of the grantee to file with the City a performance bond in an amount as specified in the franchise agreement prior to the commencement of operation. The performance bond shall be in favor of the City, and the City may be entitled to damages as a result of any occurrence in the operation of or termination of the cable system operated under this chapter or the franchise agreement.

2. Such bond as contemplated herein shall be in the form approved by the City.

3. In no event shall the amount of said bond be construed to limit the liability of the grantee for damages.

4. Within ten days after execution of the franchise agreement, the grantee shall deposit with the City Clerk, and maintain on deposit through the term of this franchise, the sum of \$10,000.00 as security for the faithful performance by it of all the provisions of the franchise and compliance with all orders, permits, and directions of any agency of the City having jurisdiction over its acts or defaults under the 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.

5. Within ten days after notice that any amount has been withdrawn from the security fund deposited pursuant to subsection 1 of this section, the grantee shall pay to, or deposit with, the City Clerk a sum of money sufficient to restore such security fund to the original amount of \$10,000.00.

6. If the grantee fails to pay to the City any compensation within the time fixed herein; or fails after ten days' notice to pay to the City any taxes due and unpaid; or fails to repay to the City within such ten 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 the franchise; or fails after three days' notice of such failure by the Council to comply with any provision of the contract which the Council reasonably determines can be remedied by an expenditure of the security, the Clerk may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the Clerk shall notify the company of the amount and date thereof.

7. The security fund deposited pursuant to this section shall become the property of the City in the event that the contract is cancelled by reason of the default of the grantee. The grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the

expiration of the term of the franchise, provided that there is then no outstanding default on the part of the grantee. Interest earned by the investment of the security fund will accrue to the grantee.

8. The rights reserved to the City with respect to the security fund are in addition to all other rights of the City, whether reserved by this chapter or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right the City may have.

115.48 WORK PERFORMED BY OTHERS.

1. The grantee shall give prior notice to the City specifying the names and addresses of any entity, other than the grantee, that performs construction services in excess of \$10,000.00 pursuant to the franchise, provided, however, that all provisions of the franchise remain the responsibility of the grantee.

2. All provisions of a franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of the franchise.

3. Nothing in this section shall be construed as allowing the transfer of any rights or responsibilities of the grantee without approval of the City in writing.

115.49 GRANTEE INSURANCE.

1. Insurance Required. The grantee shall maintain, throughout the term of the franchise, insurance in amounts at least as follows:

A. Worker's Compensation. Worker's compensation with Coverage A at statutory limits and Coverage B at limits of \$500,000. Insurance shall cover the employees of the grantee in compliance with the State of Iowa and all other states having jurisdiction over each employee.

B. Comprehensive General Liability. Comprehensive general liability including premises/operations; products/completed operations; broad form property damage; contractual liability; coverage for explosion, collapse, and underground hazards; and pollution control liability shall include limits of not less than one million dollars for bodily injury (including death) and property damage for each occurrence and not less than one million dollars in the aggregate.

C. Umbrella Liability. Umbrella liability with limits of not less than two million dollars and carrying the following endorsement: It is hereby understood and agreed that despite anything to the contrary where underlying insurance, as described herein, provides greater protection or indemnity to the insured than the terms and conditions of this policy, this insurance shall pay on behalf of the insured the same terms, conditions, and coverage which apply to the basic underlying insurance. Where no such broader underlying insurance exists, this policy shall pay on behalf of the insured upon terms and conditions and limitations of the carrier's umbrella excess policy.

2. Certificates to City. The grantee shall furnish the City with copies of such insurance policies or certificates of insurance within 45 days of the effective date of the franchise agreement. Certificates of insurance shall be furnished by the grantee to the City annually thereafter.

3. City as Additional Insured. Such insurance policies provided for herein shall name the City as additional insured, and shall be primary to any insurance carried by City, and shall contain the following endorsement: Should any of the above described policies be cancelled before the expiration date

thereof, the issuing company will endeavor to mail 30 days' written notice to the certificate holder named.

4. No Limitation on Liability. The minimum amounts set forth in the franchise agreement for such insurance shall not be construed to limit the liability of the grantee to the City under the franchise issued hereunder to the amount of such insurance.

5. Approved Insurers. All insurance carriers providing coverage under subsection 1 of this section shall be duly licensed to operate in the State of Iowa.

115.50 INDEMNITY.

1. Extent of Indemnity. The grantee shall, by acceptance of any franchise granted, indemnify, defend, and hold harmless the City, its officers, boards, commissions, agents, and employees from any and all claims, suits, judgments for damages or other relief, costs, and attorney's fees in any way existing out of or through or alleged to arise out of or through:

A. The act of the City in granting the franchise.

B. The acts or omissions of grantee, its servants, employees, or agents, including (but not limited to) any failure or refusal by grantee, its servants, employees, or agents to comply with any obligation or duty imposed on grantee by this chapter or the franchise agreement.

C. The exercise of any right or privilege granted or permitted by this chapter or the franchise agreement.

Such indemnification shall include, but not be limited to, all claims arising in tort, contract, infringements of copyright, violations of statutes, ordinances or regulations, or otherwise.

2. Defense of Claims. In the event any claims shall arise, the City or any other indemnified party shall tender the defense thereof to the grantee. Provided, however, the City or other indemnified party in its sole discretion may participate in the defense of such claims at grantee's sole expense, and in such event, such participation shall not relieve the grantee from its duty or defense against liability or of paying any judgment entered against such party. Grantee shall not agree to any settlement of claims without City approval.

3. City's Negligence. The grantee shall not be required to indemnify the City for negligence or willful misconduct on the part of City's officials, boards, commissions, agents, or employees.

115.51 ALTERNATE REMEDIES.

No provision of this chapter shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages (including all dispute-related expenses such as attorneys' fees and except where liquidated damages are otherwise prescribed) for such violation by the grantee, or judicial enforcement of the grantee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy available at law or in equity. All judicial action sought for violation of any provision of

the franchise or any rule, regulation, requirement, or directive promulgated thereunder shall be commenced in the Johnson County District Court.

115.52 NON-ENFORCEMENT.

Subject to the provisions of the Act, a grantee shall not be relieved of any obligation to comply with any of the provisions of the franchise or any rule, regulation, requirement, or directive promulgated thereunder by reason of any failure of the City or its officers, agents, or employees to enforce prompt compliance, nor shall such be considered a waiver thereof.

115.53 COMPLIANCE WITH LAW.

Notwithstanding any other provisions of the franchise to the contrary, the grantee shall at all times comply with all laws and regulations of the State and Federal government or any administrative agencies thereof. Provided, however, if any such State or Federal law or regulation requires the grantee to perform any service, or permits the grantee to perform any service, or prohibits the grantee from performing any service, in conflict with the terms of 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 regulation or law and the laws or regulations of the City or the franchise.

115.54 UNAUTHORIZED RECEPTION OR SALE OF CABLE SERVICES.

1. It is unlawful for any person to lawfully obtain any cable signal or service from a grantee and to resell such cable signal or service without the prior written consent of such grantee.
2. It is unlawful for any person to intercept, descramble, decode, or receive or assist in the interception, descrambling, decoding, or receiving of any cable signal or service of a grantee without the prior written consent of grantee. As used in this subsection, "assist in interception, descrambling, decoding, or receiving" includes the manufacture or distribution of equipment intended by the manufacturer or distributor for unauthorized reception of cable signal or service.
3. It is unlawful for any person to intentionally damage any cables, lines or equipment of any grantee used in or for the purpose of transmitting cable signals or service.
4. It is unlawful for any person to obtain cable signals or service from any grantee by means of fraud, deceit, or theft.

115.55 WAIVER OR EXEMPTION.

The City reserves the right to waive provisions of this chapter – or exempt a grantee from meeting provisions of this chapter – if the City determines such waiver or exemption is in the public interest.

115.56 FORCE MAJEURE.

Any delay, preemption, or other failure to provide cable service and to perform other duties contained in this chapter and the franchise agreement by the grantee caused by factors beyond the grantee's control, such as acts of God, labor disputes, non-delivery by program suppliers, war, riots, government order or regulation, shall not result in a breach of the terms of this chapter and franchise agreement. Grantee shall exercise its reasonable efforts to cure any such delays and the cause thereof, and

performance under the terms of this chapter and franchise agreement shall be excused by the city for the period of time during which such factors continue.

Iowa State Code

CHAPTER 477A CABLE OR VIDEO SERVICE FRANCHISES

Purpose of chapter; 2007 Acts, ch 201, §1

477A.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the utilities board within the utilities division of the department of commerce.
2. "Cable operator" means the same as defined in 47 U.S.C. §522.
3. "Cable service" means the same as defined in 47 U.S.C. §522.
4. "Cable system" means the same as defined in 47 U.S.C. §522.
5. "Competitive cable service provider" means a person who provides cable service over a cable system in an area other than the incumbent cable provider providing service in the same area.
6. "Competitive video service provider" means a person who provides video service other than a cable operator.
7. "Franchise" means an initial authorization, or renewal of an authorization, issued by the board or a municipality, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable system or video service provider's network in a public right-of-way.
8. "Franchise fee" means the fee imposed under section

477A.7.

9. a. "Gross revenues" means all consideration of any kind or nature, including but not limited to cash, credits, property, and in-kind contributions received from subscribers for the provision of cable service over a cable system by a competitive cable service provider or for the provision of video service by a competitive video service provider within a municipality's jurisdiction. Gross revenues are limited to the following:

- (1) Recurring charges for cable service or video service.
- (2) Event-based charges for cable service or video service, including but not limited to pay-per-view and video-on-demand charges.
- (3) Rental of set-top boxes and other cable service or video service equipment.
- (4) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.

(5) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.

(6) A pro rata portion of all revenue derived, less refunds, rebates, or discounts, by a cable service provider or a video service provider for advertising over the cable service or video service network to subscribers within the franchise area where the numerator is the number of subscribers within the franchise area, and the denominator is the total number of subscribers reached by such advertising. This subparagraph applies only to municipalities that include this provision in their franchise agreements as of January 1, 2007.

b. "Gross revenues" does not include any of the following:

(1) Revenues not actually received, even if billed, including bad debt.

(2) Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the person providing cable service or video service.

(3) Refunds, rebates, or discounts made to third parties, including subscribers, leased access providers, advertisers, or any municipality or other unit of local government.

(4) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues derived by the holder of a certificate of franchise authority from services not classified as cable service or video service, including, without limitation, revenue received from telecommunications services, revenue received from information services, revenue received in connection with home-shopping services, or any other revenues attributed by the competitive cable service provider or competitive video service provider to noncable service or nonvideo service in accordance with the holder's books and records kept in the regular course of business and any applicable rules, regulations, standards, or orders.

(5) Revenues paid by subscribers to home-shopping programmers directly from the sale of merchandise through any home-shopping channel offered as part of the cable services or video services.

(6) Revenues from the sale of cable services or video services for resale in which the purchaser is required to collect the franchise fee from the purchaser's customer.

(7) Revenues from any tax of general applicability imposed upon the competitive cable service provider or competitive video service provider or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the competitive cable service provider or competitive video service provider and remitted to the taxing entity, including but not limited to sales or use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes, and including the franchise fee imposed under section 477A.7.

(8) Revenues forgone from the provision of cable services or video services to public institutions, public schools, or governmental entities at no charge.

(9) Revenues forgone from the competitive cable service provider's or competitive video service provider's provision of free or reduced-cost video service to any person, including, without limitation, any municipality and other public institutions or other institutions.

(10) Revenues from sales of capital assets or sales of surplus equipment.

(11) Revenues from reimbursements by programmers of marketing costs incurred by the competitive cable service provider or competitive video service provider for the introduction or promotion of new programming.

(12) Directory or internet advertising revenues including but not limited to yellow page, white page, banner advertisement, and electronic publishing.

(13) Copyright fees paid to the United States copyright office.

(14) Late payment charges.

(15) Maintenance charges.

10. "Incumbent cable provider" means the cable operator serving the largest number of cable subscribers in a particular franchise service area on January 1, 2007.

11. "Institutional network" means the system of dedicated fibers, coaxial cables, or wires constructed and maintained by an incumbent cable provider which is reserved and dedicated by the municipality for noncommercial purposes.

12. "Municipality" means a city.

13. "Percentage of gross revenues" means the percentage set by the municipality and identified in a written request made under section 477A.7, subsection 1, which shall be not greater than five percent. However, if the incumbent cable provider is a municipal utility providing telecommunications services under section 388.10, "percentage of gross revenues" means the percentage set by the municipality and identified in a written request made under section 477A.7, subsection 1, which shall not be greater than an equitable apportionment of the services and fees that the municipal utility pays to the municipality, or five percent, whichever is less.

14. "Public right-of-way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the municipality has an interest, including other dedicated rights-of-way for travel purposes and utility easements. "Public right-of-way" does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcast services or utility poles owned by a municipality or a municipal utility.

15. "Video programming" means the same as defined in 47 U.S.C. § 522.

16. "Video service" means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including internet protocol technology. "Video service" does not include any video programming provided by a provider of commercial mobile service as defined in 47 U.S.C. § 332, or cable service provided by an incumbent cable provider or a competitive cable service provider or any video programming provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet.

477A.2 CERTIFICATE OF FRANCHISE AUTHORITY REQUIREMENT.

1. After July 1, 2007, a person providing cable service or video service in this state shall not provide such service without a franchise. The franchise may be issued by either the board pursuant to section 477A.3 or by a municipality pursuant to section 364.2.

2. a. A person providing cable service or video service under a franchise agreement with a municipality prior to July 1, 2007, is not subject to this section with respect to such municipality until the franchise agreement expires or is converted pursuant to subsection 6.

b. Upon expiration of a franchise, a person may choose to renegotiate a franchise agreement with a municipality or may choose to obtain a certificate of franchise authority under this chapter. An application for a certificate of franchise authority pursuant to this subsection may be filed within sixty days prior to the expiration of a municipal franchise agreement. A certificate of franchise authority obtained pursuant to an application filed prior to the expiration of a municipal franchise agreement shall take effect upon the expiration date of the municipal franchise agreement.

c. A municipal utility that provides cable service or video service in this state is not subject to this section and shall not be required to obtain a certificate of franchise authority pursuant to this chapter in the municipality in which the provision of cable service or video service by that municipality was originally approved.

3. For purposes of this section, a person providing cable service or video service is deemed to have executed a franchise agreement to provide cable service or video service with a specific municipality if an affiliate or predecessor of the person providing cable service or video service has or had executed an unexpired franchise agreement with that municipality as of May 29, 2007.

4. A competitive cable service provider or competitive video service provider shall provide at least thirty days' notice to each municipality with authority to grant a franchise in the service area, and to the incumbent cable provider, in which the competitive cable service provider or competitive video service provider is granted authority to provide service under a certificate of franchise authority that the competitive cable service provider or competitive video service provider will offer cable services or video services within the jurisdiction of the municipality, and shall not provide service without having provided such thirty days' notice.

5. As used in this section, "affiliate" includes but is not limited to a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a person receiving, obtaining, or operating under a franchise agreement with a municipality to provide cable service or video service through merger, sale, assignment, restructuring, or any other type of transaction.

6. If a competitive cable service provider or a competitive video service provider applies for a certificate of franchise authority to operate within a municipality, the incumbent cable provider may, at its discretion, apply for a certificate of franchise authority for that same municipality. Such application shall be automatically granted on the same day as a competitive cable service provider or competitive video service provider files a thirty days' notice of offering service as required pursuant to subsection 4. The franchise agreement with the municipality is terminated on the date the board issues the certificate of franchise authority to an incumbent cable provider. The terms and conditions of the certificate of franchise authority shall be the same as the terms and conditions of a competitive cable service provider

or a competitive video service provider pursuant to this chapter and shall replace the terms and conditions of the franchise agreement previously granted by the municipality.

477A.3 APPLICATION REQUIREMENTS -- CERTIFICATE OF FRANCHISE AUTHORITY.

1. The board shall issue a certificate of franchise authority under this chapter within fifteen business days after receipt of a completed application and affidavit submitted by the applicant and signed by an officer or general partner of the applicant. The application and affidavit shall provide all of the following information:

a. That the applicant has filed or will timely file with the federal communications commission all forms required by the commission in advance of offering cable service or video service in this state.

b. That the applicant agrees to comply with all applicable federal and state statutes, regulations, and rules.

c. That the applicant agrees to comply with all applicable state laws and nondiscriminatory municipal ordinances and regulations regarding the use and occupation of a public right-of-way in the delivery of the cable service or video service, to the extent consistent with this chapter, including the police powers of the municipalities in which the service is delivered.

d. A description of the service area to be served and the municipalities to be served by the applicant which may include certain designations of unincorporated areas. This description shall be updated by the applicant prior to the expansion of cable service or video service to a previously undesignated service area and, upon such expansion, notice shall be given to the board of the service area to be served by the applicant.

e. The address of the applicant's principal place of business and the names of the applicant's principal executive officers.

2. The failure of the board to notify the applicant of the completeness of the applicant's affidavit or issue a certificate of franchise authority before the fifteenth business day after receipt of a completed affidavit shall constitute issuance of the certificate of franchise authority applied for by the applicant without further action by the applicant.

3. The certificate of franchise authority issued by the board shall contain all of the following:

a. A grant of authority to provide cable service or video service in the service area designated in the application.

b. A grant of authority to use and occupy the public right-of-way in the delivery of cable service or video service, subject to the laws of this state, including the police powers of the municipalities in which the service is delivered.

c. A statement that the grant of authority provided by the certificate is subject to the lawful operation of the cable service or video service by the applicant or the applicant's successor.

d. A statement that the franchise is for a term of ten years, is renewable under the terms of this section, and is nonexclusive.

4. A certificate of franchise authority issued by the board is fully transferable to any successor of the applicant to which the certificate was initially issued. A notice of transfer shall be filed by the holder of the certificate of franchise authority with the board and the affected municipality and shall be effective fourteen business days after submission. The notice of transfer shall include the address of the successor's principal place of business and the names of the successor's principal executive officers. The successor shall assume all regulatory rights and responsibilities of the holder of the certificate. Neither the board nor an affected municipality shall have authority to review or require approval of such transfer.

5. The certificate of franchise authority issued by the board may be terminated by a person providing cable service or video service by submitting written notice to the board and any affected municipality. Neither the board nor an affected municipality shall have authority to review or require approval of such termination.

6. The board shall only have the authorization to issue a certificate of franchise authority as provided in this section, and shall not impose any additional requirements or regulations upon an applicant.

477A.4 APPLICABILITY TO FEDERAL LAW.

To the extent required by applicable law, a certificate of franchise authority issued under this chapter shall constitute a "franchise" for the purposes of 47 U.S.C. § 541(b)(1). To the extent required for the purposes of 47 U.S.C. § 521--561, only the state of Iowa shall constitute the exclusive franchising authority for competitive cable service providers and competitive video service providers in this state.

477A.5 MUNICIPALITY RESTRICTIONS. 1. A municipality shall not require a holder of a certificate of franchise authority to do any of the following:

- a. Comply with a mandatory build-out provision.
- b. Obtain a separate franchise.
- c. Pay any additional fees, except as provided in this chapter.
- d. Be subject to any additional franchise requirement by the municipality, except as provided in this chapter.

2. For purposes of this section, a "franchise requirement" includes any provision regulating rates or requiring build-out requirements to deploy any facilities or equipment.

3. Section 364.2 shall not apply to a holder of a certificate of franchise authority issued pursuant to this chapter.

477A.6 PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS CHANNELS.

1. Not later than one hundred eighty days after a request by a municipality in which a competitive cable service provider or a competitive video service provider is providing cable service or video service,

the holder of the certificate of authority for that municipality shall designate a sufficient amount of capacity on the certificate holder's communications network to allow the provision of a comparable number of public, educational, and governmental channels that the incumbent cable provider in the municipality has activated and provided in the municipality under the terms of a franchise agreement with a municipality prior to July 1, 2007. If no such channels are active, the municipality may request a maximum of three public, educational, and governmental channels for a municipality with a population of at least fifty thousand, and a maximum of two public, educational, and governmental channels for a municipality with a population of less than fifty thousand.

a. The public, educational, and governmental content to be provided pursuant to this section and the operation of the public, educational, and governmental channels shall be the responsibility of the municipality receiving the benefit of such capacity. The holder of a certificate of franchise authority shall be responsible only for the transmission of such content, subject to technological restraints.

b. The municipality receiving capacity under this section shall ensure that all transmissions, content, or programming to be transmitted by the holder of the certificate of franchise authority are provided or submitted to the competitive cable service provider or competitive video service provider in a manner or form that is capable of being accepted and transmitted by the competitive cable service provider or competitive video service provider, without requirement for additional alteration or change in the content, over the particular network of the competitive cable service provider or competitive video service provider, which is compatible with the technology or protocol utilized by the competitive cable service provider or competitive video service provider to deliver services. At its election the municipality may reasonably request any cable service provider or video service provider to make any necessary change to the form of any programming, furnished for transmission, which shall be charged to the municipality, not to exceed the provider's incremental costs. The municipality shall have up to twelve months to reimburse the cable service provider or video service provider. The provision of such transmissions, content, or programming to the competitive cable service provider or competitive video service provider shall constitute authorization for such holder to carry such transmissions, content, or programming, at the holder's option, beyond the jurisdictional boundaries stipulated in any franchise agreement.

2. Where technically feasible, a competitive cable service provider or competitive video service provider that is a holder of a certificate of franchise authority and an incumbent cable provider shall use reasonable efforts to interconnect the cable or video communications network systems of the certificate holder and incumbent cable provider for the purpose of providing public, educational, and governmental programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. A holder of a certificate of franchise authority and an incumbent cable provider shall negotiate in good faith and an incumbent cable provider shall not withhold interconnection of public, educational, or governmental channels.

3. A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section. Section History: Recent Form

477A.7 FEES -- FINANCIAL SUPPORT.

1. a. In any service area in which a competitive cable service provider or a competitive video service provider holding a certificate of franchise authority offers or provides cable service or video service, the competitive cable service provider or competitive video service provider shall calculate and pay a franchise fee to the municipality with authority to grant a certificate of franchise authority in that service area upon the municipality's written request. If the municipality makes such a request, the franchise fee shall be due and paid to the municipality on a quarterly basis, not later than forty-five days after the close of the quarter, and shall be calculated as a percentage of gross revenues. The municipality shall not demand any additional franchise fees from the competitive cable service provider or competitive video service provider, and shall not demand the use of any other calculation method for the franchise fee.

b. All cable service providers and video service providers shall pay a franchise fee at the same percent of gross revenues as had been assessed on the incumbent cable provider by the municipality as of January 1, 2007, and such percentage shall continue to apply for the period of the remaining term of the existing franchise agreement with the municipality. Upon expiration of the period of the remaining term of the agreement with the incumbent cable service provider, a municipality may request an increase in the franchise fee up to five percent of gross revenues.

c. A provider who is both a competitive cable service provider and a competitive video service provider shall be subject to and only be required to pay one franchise fee to a municipality under this subsection regardless of whether the provider provides both cable service and video service.

d. At the request of a municipality and not more than once per year, an independent auditor may perform reasonable audits of the competitive cable service provider's or competitive video service provider's calculation of the franchise fee under this subsection. The municipality shall bear the costs of any audit requested pursuant to this subsection, unless the audit discloses that the competitive cable service provider or competitive video service provider has underpaid franchise fees by more than five percent, in which case the competitive cable service provider or competitive video service provider shall pay all of the reasonable and actual costs of the audit.

e. A competitive cable service provider or competitive video service provider may identify and collect the amount of the franchise fee as a separate line item on the regular bill of each subscriber.

2. If an incumbent cable provider pays any fee to a municipality for public, educational, and governmental access channels, any subsequent holder of a certificate of franchise authority that includes that municipality shall pay this fee at the same rate during the remaining term of the existing franchise agreement with the municipality, even if the incumbent cable provider elects to convert to a certificate of franchise authority pursuant to section 477A.2. All fees collected pursuant to this subsection shall be used only for the support of the public, educational, and governmental access channels.

3. a. If an incumbent cable provider is required by a franchise agreement as of January 1, 2007, to provide institutional network capacity to a municipality for use by the municipality for noncommercial purposes, the incumbent cable provider and any subsequent holder of a certificate of franchise authority shall provide support only for the existing institutional network on a pro rata basis per customer. Any financial support provided for an institutional network shall be limited to ongoing maintenance and support of the existing institutional network. This subsection shall be applicable only

to a cable service provider's or video service provider's first certificate of franchise authority issued under this chapter, and shall not apply to any subsequent renewals. For the purposes of this subsection, maintenance and support shall only include the reasonable incremental cost of moves, changes, and restoring connectivity of the fiber or coaxial cable lines up to a demarcation point at the building.

b. For purposes of this subsection, the number of customers of a cable service provider or video service provider shall be determined based on the relative number of subscribers in that municipality at the end of the prior calendar year as reported to the municipality by all incumbent cable providers and holders of a certificate of franchise authority. Any records showing the number of subscribers shall be considered confidential records pursuant to section 22.7. The incumbent cable provider shall provide to the municipality, on an annual basis, the maintenance and support costs of the institutional network, subject to an independent audit. A municipality acting under this subsection shall notify and present a bill to competitive cable service providers or competitive video service providers for the amount of such support on an annual basis, beginning one year after issuance of the certificate of franchise authority. The annual institutional network support shall be due and paid by the providers to the municipality in four quarterly payments, not later than forty-five days after the close of each quarter. The municipality shall reimburse the incumbent cable provider for the amounts received from competitive cable service providers or competitive video service providers.

c. This subsection shall not apply if the incumbent cable service provider is a municipal utility providing telecommunications services under section 388.10.

4. A franchise fee may be assessed or imposed by a municipality without regard to the municipality's cost of inspecting, supervising, or otherwise regulating the franchise, and the fees collected may be credited to the municipality's general fund and used for municipal general fund purposes.

5. To the extent that any amount of franchise fees assessed by and paid to a municipality prior to May 29, 2007, pursuant to a franchise agreement between a municipality and any person to erect, maintain, and operate plants and systems for cable television, exceeds the municipality's reasonable costs of inspecting, supervising, or otherwise regulating the franchise, such amount is deemed and declared to be authorized and legally assessed by and paid to the municipality.

477A.8 CUSTOMER SERVICE STANDARDS.

1. The holder of a certificate of franchise authority shall comply with customer service requirements consistent with those contained in 47 C.F.R. § 76.309, and shall maintain a local or toll-free telephone number for customer service contact.

2. The holder of a certificate of franchise authority shall implement an informal process for handling inquiries from municipalities and customers concerning billing events, service issues, and other complaints. If an issue is not resolved through this informal process, a municipality may request a confidential nonbinding mediation with the holder of a certificate of franchise authority, with the costs of such mediation to be shared equally between the municipality and the holder of a certificate of franchise authority.

477A.9 NONDISCRIMINATION BY MUNICIPALITY.

1. A municipality shall allow the holder of a certificate of franchise authority to install, construct, and maintain a communications network within a public right-of-way and shall provide the holder of a certificate of franchise authority with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way.

2. A municipality shall not discriminate against the holder of a certificate of franchise authority in providing access to a municipal building or through a municipal utility pole attachment term.

477A.10 PROVIDER DISCRIMINATION PROHIBITED.

1. The purpose of this section is to prevent discrimination among potential residential subscribers.

2. A competitive cable service provider or competitive video service provider holding a certificate of franchise authority shall not deny access to any group of potential residential subscribers because of the income of residents in the local area in which such group resides.

3. a. A video service provider operating under a certificate of franchise authority that is using telecommunication facilities to provide video services and has more than five hundred thousand telecommunication access lines in this state shall extend its system to a potential subscriber, at no cost to the potential subscriber, if all of the following criteria are met:

(1) The potential subscriber is located within its authorized service area.

(2) At least two hundred fifty dwelling units are located within two thousand five hundred feet of a remote terminal.

(3) These dwelling units do not have cable or video service available from another cable service provider or video service provider.

b. This subsection shall be applicable only after the first date on which the video service provider operating under a certificate of franchise authority is providing cable service or video service to more than fifty percent of all cable and video subscribers receiving cable or video service from the holders of certificates of franchise authority and any other providers of cable or video services operating under franchise agreements with a municipality.

477A.11 APPLICABILITY OF OTHER LAW.

1. This chapter is intended to be consistent with the federal Cable Act, 47 U.S.C. § 521 et seq.

2. Except as otherwise stated in this chapter, this chapter shall not be interpreted to prevent a competitive cable service provider, competitive video service provider, municipality, or other provider of cable service or video service from seeking clarification of any rights and obligations under federal law or to exercise any right or authority under federal or state law.

477A.12 RULES.

The board shall adopt rules necessary to administer this chapter.



North Liberty Telecommunications Commission

Meeting Agenda

Monday, March 7, 2016

6:00 p.m. Regular Session

City Council Chambers, 1 Quail Creek Circle

1. Call to order.

At 6 p.m. Hoffman called the meeting to order.

2. Roll call.

Present were commissioners Hoffman, Osterhaus, Gattas and Wells. Also present: Nick Bergus, Erika Harper, Stefan Juran, and Dan Swick.

3. Public comment for items not on the agenda.

There was none.

4. Mediacom update.

No Mediacom representative was present.

5. South Slope update.

South Slope's Dan Swick was present and touched on a video subscriber rate increase – the first since May 2014. Swick also mentioned that South Slope was awarded the Smart Rural Community Award. South Slope was one of 12 telephone companies in the country to receive the recognition. An additional handout, provided by Swick, noted what fiber optic technology can do. Wells asked for clarification on rate increase. Wells' second question was regarding the breakdown of services – video, internet, telephone. Swick described the fiber to home in greater detail. Gattas asked how many homes are hooked up to South Slope fiber. Hoffman congratulated South Slope on their award.

6. Telecommunications staff report.

Bergus discussed highlights of the previous three months including department goals, public projects open houses, Beat the Bitter, the library podcast, and North Liberty Blues & BBQ planning.

7. The Commission and Closing the Last Mile

Bergus discussed his meeting with Hoffman. Bergus asks the commission how they could help with reaching residents that may not have access to social media, internet, etc. Wells asked about the elements of the "last mile" and noted some of closing that last mile includes issues with accessibility. Hoffman added that some residents don't have access, but some don't want to be reached. Hoffman also brought up the survey. Gattas added that some folks rely on others to present the information to them. Bergus confirmed that there's new resident information available online and at city hall. Osterhaus said the website was helpful when he was a new resident. Gattas suggested closing the mile with new residents moving to the area. Commission asked what city staff needs. Hoffman brought up using neighborhood liaisons. Gattas mentioned collaborating with other Facebook pages. Hoffman suggests reconvening on April 4.

8. Approval of minutes.

Wells moved, and Gattas seconded, to approve the minutes of the Dec. 7, 2015, meeting. The motion passed with all in favor.

9. Old business.

There was none.

10. New business.

There was none.

11. Next meeting date: Monday, April 4, 2016 at 6 p.m.

No conflicts were noted.

12. Adjourn.

Osterhaus moved, and Gattas seconded, to adjourn the meeting at 7 p.m. The motion passed with all in favor.