

Chapter 4-6

CABLE TELEVISION REGULATION

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Section 4-6-1 Definitions

The following words and phrases, when used in this Chapter, shall, for the purposes of this Chapter, have the meanings ascribed to them in this Section:

(A) "BASIC SERVICES": Any or all of the different combinations of basic program services as described in the grantee's franchise ordinance including the delivery of local broadcast signals, satellite signals, local origination and access signals, covered by the entry level monthly charges paid by subscribers, excluding the optional premium services for which separate charges are made.

(B) "CABLE COMMUNICATION SYSTEM, CABLE TELEVISION SYSTEM OR CATV SYSTEM": A system of antennas, cables, wire, lines, towers, wave-guides or other converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronic or electrical signals, located in the City. Said definition shall not include any facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management and does not use City rights of way.

(C) "CHANNEL": The segment of the electromagnetic spectrum to which a source of television transmission is assigned.

(D) "CITY": The City of Storm Lake, Iowa. When the context so requires, the term "City" shall mean and include the City, its officers, agents, employees, servants and independent contractors.

(E) "FCC": The Federal Communications Commission.

(F) "FRANCHISE": The rights, privileges, and authority granted by the City to the grantee hereunder and shall include all of the terms and conditions of this Chapter.

(G) "GRANTEE": Any corporation or other business entity which holds a franchise to provide cable television service in Storm Lake, Iowa, or its successors and assigns. When the context so requires, the term "grantee" shall mean and include the grantee, its officers, agents, employees, servants and independent contractors.

(H) "PERSON": Any individual, or any corporation, business, or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.

(I) "PROPERTY OF THE GRANTEE": All property, real, personal or mixed, owned or used by the grantee however arising from or related to or connected with the franchise.

(J) "PUBLIC PROPERTY": All property, real, personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

Section 4-6-2 Use Of Property

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

(A) The grantee shall comply with all governmental laws, ordinances, rules or regulations as may now or hereinafter be applicable thereto.

(B) The grantee shall not use or occupy or permit public property or private property to be used or occupied, or do or permit anything to be done on or about public property or private property which will, in any manner:

1. Impair the owner's interest in or title thereto;
2. Impair the mortgage or lease as may now or hereinafter be applicable thereto;
3. Adversely affect the then value or character thereof;
4. Cause or be likely to cause structural damage thereto, or any part thereof;
5. Cause or be likely to cause any damage or injury to any utility service available thereto;
6. Create a public or private nuisance, cause any offensive or obnoxious vibration, noise, odor or undesirable effect or interfere with the safety, comfort or convenience of the owner thereof, and person lawfully on or about the same;
7. Violate the rules, regulations and requirements or any person furnishing utilities or services thereto;
or
8. Make void or voidable any insurance then in force affecting the same or cause an increase in the rates applicable thereto.

Section 4-6-3 Taxes

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

Section 4-6-4 Insurance

(A) The grantee shall, at all times during the term of the franchise, carry and require their contractors to carry:

1. Insurance in such forms and in such companies as shall be approved by the City to protect the City and grantee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of any structure, equipment or appliance in connection with the cable television system. The amount of such insurance shall be not less than one hundred thousand dollars (\$100,000.00) as to any one person, five hundred thousand dollars (\$500,000.00) as to any one occurrence for injury or death to persons, and one hundred thousand dollars (\$100,000.00) for damages to property, with, as to grantee, excess liability coverage of at least five million dollars (\$5,000,000.00).
2. Workmen's compensation insurance, as provided by the laws of the State as amended.

3. Automobile insurance with limits of not less than one hundred thousand dollars/three hundred thousand dollars (\$100,000.00/ \$300,000.00) of public liability coverage and automobile property damage insurance with a limit of not less than one hundred thousand dollars (\$100,000.00) covering all automotive equipment, with, as to grantee, so-called umbrella coverage of at least five million dollars (\$5,000,000.00).

(B) All of said insurance coverage shall provide a ten (10) day notice to the City in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date of said material alteration or cancellation shall become effective.

(C) Copies of all insurance policies required hereunder shall be furnished and filed with the City prior to the commencement of operations or the expiration of prior policies, as the case may be.

(D) The grantee shall pay all reasonable expenses incurred by the City in defending itself with regard to all damages, penalties or other claims resulting from the acts of the grantee, its assigns, employees, agents, invitees or other persons. Said expenses shall include all out-of-pocket expenses, such as attorney's fees, and shall include the value of any service rendered by the City Attorney or any other officers or employees of the City.

Section 4-6-5 Construction And Performance Bond

(A) The grantee shall construct or reconstruct its cable television system required by the terms of grantee's franchise ordinance within eighteen (18) months of the effective date of the franchise ordinance. All construction and reconstruction of grantee's system facilities shall be in compliance with the rules and regulations of the Federal Communications Commission (FCC) and of this Chapter.

(B) Within thirty (30) days after the award of a franchise, the grantee shall file with the City a performance bond in the amount of fifty thousand dollars (\$50,000.00). This bond shall be maintained throughout the reconstruction of the system pursuant to subsection (A) hereof.

(C) In the event the grantee fails to comply with any law, ordinance or regulation governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, as it relates to the conditions relative to the construction or reconstruction of the system, including the grantee's design proposal which is incorporated herein by reference, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney's fees, including the City's legal staff, the costs, up to the full amount of the bond. This subsection shall be an additional remedy for any and all violations outlined in Section 4-6-12.

(D) Upon completion of construction or reconstruction of a system in the City, to the satisfaction of the City Council, the amount of the bond shall be reduced to five thousand dollars (\$5,000.00) and shall be maintained throughout the remaining term of the franchise to insure the faithful performance by the grantee of all provisions of this franchise.

(E) The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not

to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, a written notice of such intent to cancel and not to renew."

(F) Upon receipt of a thirty (30) day notice, this shall be construed as default granting the City the right to call in the bond.

Section 4-6-6 Liquidated Damages

By acceptance of a franchise granted hereunder, the grantee understands and agrees that failure to comply with any time and performance requirements, as stipulated in this Chapter or in the franchise, will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance. The grantee therefore agrees that it shall pay to the City government the following amounts which shall be chargeable to the performance bond if such amounts are not paid by the grantee within thirty (30) days of written notice by the City that the grantee is required to pay such amounts.

(A) For failure to complete system construction in accordance with Section 4-6-5, unless the City Council by motion or resolution specifically approves the delay due to the occurrence of conditions beyond grantee's control, grantee shall pay two hundred fifty dollars (\$250.00) per day for each day, or part thereof, said deficiency continues.

(B) For failure to provide, upon written request, data, documents, reports, information, grantee shall pay fifty dollars (\$50.00) per day, or part thereof, for so long as each violation occurred or continues.

(C) For failure to provide in a continuing manner the services required under Section 4-6-32 of this Chapter, unless the City Council specifically approves a request by the grantee for a delay or change, the grantee shall pay to the City two hundred fifty dollars (\$250.00) per day, or part thereof, that such noncompliance continues.

(D) If grantee fails to make the improvements within the time period established by the City Council pursuant to Section 4-6-7, grantee shall pay to the City two hundred fifty dollars (\$250.00) for each day, or part thereof, that such noncompliance continues.

Section 4-6-7 New Developments

(A) The City Council shall have the authority to order a public hearing from time to time on the provision of additional channel capacity by the grantee or on the inclusion in the grantee's CATV system of state-of-the-art technology or upgraded facilities.

(B) If after such a hearing, the City Council determines (1) that there exists a reasonable need and demand for additional channel capacity and/or state-of-the-art technology or upgraded facilities, and (2) that provision has been made or will be made for adequate rates which will allow a grantee a fair rate of return on its investment (including the investment required to provide the additional channels and/or the state-of-the-art technology or upgraded facilities), and will not result in economic waste for the grantee, the City Council may order grantee to provide a specified number of additional channels and/or specified state-of-the-art technology or upgraded facilities. Without implying any limitations as to other provisions of this Chapter, failure of the grantee to act in accordance with such order is hereby deemed to be in violation of a material provision within the meaning of Section 4-6-12(A)1 of this Chapter.

Section 4-6-8 Repairs

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

Section 4-6-9 Hold Harmless

During the term of a franchise, the grantee absolutely forever indemnifies the City against, and agrees to hold and save the City harmless from, any and all damage, injury, costs, expenses, liability, claims, settlements, judgments, decrees and awards of every kind and nature whatsoever, including attorney's fees, costs and disbursements, that may ever be claimed against the City by any person whatsoever, or on account of any actual or alleged loss, damage or injury to any property whatsoever, however arising from or related to or connected with, directly or indirectly:

- (A) Injury to or death of any person, or loss, damage or injury to any property resulting from acts of the grantee;
- (B) The nonobservance by the grantee of the provisions of any laws, statutes, ordinances, resolutions, regulations or rules duly promulgated by any governmental entity which may be applicable directly or indirectly, to rights, privileges, and authority, and the obligations and liabilities, assumed by the grantee under the franchise;
- (C) The nonobservance by the grantee of any of the terms and conditions of the franchise; and/or
- (D) The granting of the franchise.

Section 4-6-10 Assignment

A grantee shall not assign or transfer any right granted under its franchise ordinance to any other person, company or corporation without prior consent of the City Council, which consent shall not be unreasonably withheld; provided that a grantee shall have the right to assign the provisions of its franchise to a corporation wholly owned by the grantee or its parent company.

Section 4-6-11 Insolvency Of Grantee

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

Section 4-6-12 Default Of Grantee

(A) In addition to all other rights and powers retained by the City under a franchise or otherwise, the City Council reserves the right to forfeit and terminate a franchise and all rights and privileges of the grantee thereunder in the event of a material breach of its terms and conditions. A material breach by grantee shall include, but not be limited to, the following:

1. Violation of any material provision of the franchise or any material rule, order, regulation or determination of the City Council made pursuant to the franchise;
2. Attempt to evade any material provision of the franchise or practices any fraud or deceit upon the City or its subscribers or customers;
3. Failure to begin or complete system construction or system extension as provided under the franchise;
4. Failure to provide the types of services promised therein;
5. Failure to restore service after ninety-six (96) consecutive hours of interrupted service of a major portion of the system, except when approval of such interruption is maintained from the City Administrator; or
6. Material misrepresentation of fact in the application for or negotiation of the franchise.

(B) The foregoing shall constitute a material breach if the violation occurs but it is without fault of the grantee or occurs as a result of circumstances beyond its control. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its shareholders, directors, officers or employees.

(C) The City Administrator shall make a written demand that a grantee comply with any such provision, rule, order or determination under or pursuant to a franchise. If the violation by the grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City Administrator may place the issue of termination of the franchise before the City Council. The City Administrator shall cause to be served upon the grantee, at least twenty (20) days prior to the date of such City Council hearing, a written notice of intent to request such termination and the time and place of the hearing. Public notice shall be given not more than twenty (20) days prior to the hearing and shall include a description of the issue which the City Council is to consider.

(D) The City Council shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by a grantee has occurred.

(E) If the City Council shall determine the violation by a grantee was the fault of grantee and within its control, the City Council may, by resolution, declare that the franchise of the grantee shall be forfeited and terminated unless there is compliance within such period as the City Council may fix provided no opportunity for compliance need be granted for fraud or misrepresentation.

(F) The issue of forfeiture and termination shall automatically be placed upon the City Council agenda at the expiration of the time set by it for compliance. The City Council then may terminate the franchise forthwith upon finding that grantee has failed to achieve compliance or may further extend the period, in its discretion.

Section 4-6-13 Termination

In the event of termination or non-renewal of the franchise, grantee, at its own expense, shall remove all coaxial cable, amplifiers and any other items of equipment which may have been installed from time to time; provided, however, that in the event of a sale or transfer of grantee's system to a successor or substituted grantee, grantee shall be prohibited from performance under the terms of this Section.

Section 4-6-14 Compliance With Applicable Laws

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

Section 4-6-15 Installation And Maintenance Of Property Of The Grantee

During the term of a franchise, the property of the grantee shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed, and removed in accordance with generally accepted engineering principles as not to endanger or interfere with the lives of persons or to interfere with improvements which the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

Section 4-6-16 Interference

A grantee's cable television system shall be so designed, engineered and maintained so as not to interfere with the radio and television reception of persons who are not subscribed of the grantee.

Section 4-6-17 Installation Of Cables

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

Section 4-6-18 Restoration Of Ground Surface

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

commenced.

Section 4-6-19 Alteration Of Grade

In the event that, during the term of a franchise, the City shall elect to alter, or change the grade of any street, alley, or public way, a grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

Section 4-6-20 Temporary Removal Of Cables

A grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its cables to permit the moving of buildings. The expense of such temporary removal, raising or lowering of cables shall be paid by the person requesting the same and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than five (5) days' advance notice to arrange for such temporary cable charges.

Section 4-6-21 Tree-Trimming

A grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the cables of the grantee. All trimming shall be done at the expense of the grantee and grantee shall be responsible for removing all resultant trimmings.

Section 4-6-22 Line Extensions

A grantee shall be obligated to make cable service available to all dwelling units in the City at the normal installation charge and monthly rates subject to only the following exceptions:

(A) Service need not be available at the normal installation charge in any area that has a dwelling unit density or less than thirty-five (35) homes per street mile.

(B) Any potential subscriber(s) in an area of less than thirty-five (35) dwelling units per street mile may receive cable service upon payment of an installation charge equal to the actual cost per subscriber of extending the cable plant to provide service less the cost the company would have incurred per subscribed had the density been thirty-five (35) dwelling units per street mile.

Section 4-6-23 Service Requirements

(A) During the term of the franchise, the grantee shall put, keep and maintain all parts of the system in good condition and furnish reasonable, adequate and efficient cable television service to subscriber terminals.

(B) Upon termination of service to any subscriber, a grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his/her request.

(C) Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during period of minimum system use. Repairs shall be considered promptly made if made within the guidelines set forth in subsection 4-6-33(C).

(D) Grantee shall not allow its cable or other operations to interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the City.

(E) The grantee shall continue, through the term of the franchise, to maintain the technical, operational and maintenance standards and quality of service set forth in this Chapter and in a grantee's franchise ordinance. Should the City Council find that the grantee has failed to maintain these standards and quality of service, the grantee shall make such improvements as identified by the City Council. Failure to make such improvements within ninety (90) days will constitute a breach of condition, for which the remedy of Section 4-6-12 is applicable.

Section 4-6-24 Performance Standards

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

Section 4-6-25 Channel Capacity And Performance

During the term of the franchise, the cable television system of a grantee shall conform to the channel capacity and performance requirements contained in the then current regulations of the FCC, or to the channel capacity and performance requirements of the grantee's franchise ordinance, whichever is greater and/or sets forth a higher standard.

Section 4-6-26 Installation And Maintenance Of Subscriber Terminals In City Buildings And Schools

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

Section 4-6-27 Telecast Of Education Activities

A grantee shall not cablecast, tape, reproduce or otherwise convey to its subscribers the activities of any recognized educational authority, public or private, without the written consent of the governing body of

such activity.

Section 4-6-28 Program Alteration

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

Section 4-6-29 Emergency Override

A grantee shall equip its system with an emergency override system which shall have the capability of interrupting all channels, including pay services, so that emergency broadcast messages may be transmitted to all viewers. The emergency broadcast system shall only be used at the request of the Mayor, Mayor Pro Tem, City Administrator or Police Chief of the City or the Buena Vista County Civil Defense Director.

Section 4-6-30 Subscriber Rates And Charges

A grantee shall have the right, privilege and authority to charge reasonable rates and charges to its subscribers for its services and to change such rates and charges from time to time, except to the extent that subscriber rates and charges are regulated by a grantee's franchise ordinance.

Section 4-6-31 Service Rules And Regulations

A grantee shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. Such rules and regulations shall be consistent with the terms and conditions of the franchise.

The grantee shall file such rules and regulations, and all amendments thereto, with the City.

Section 4-6-32 Service Agreements

The grantee shall have the right to prescribe a reasonable form of service agreement for use between a grantee and its subscribers. Such service agreement shall be consistent with the terms and conditions of the franchise. No service agreement shall contain any terms or conditions which directly or by effect prevent a subscriber from canceling all services at the end of any month.

Section 4-6-33 Complaint Procedure

(A) The City Administrator or the City Administrator's designee is specified by the City Council as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(B) A grantee shall maintain an office or designated agent within the City, for the purpose of receiving

and resolving complaints regarding the quality of service, equipment malfunctions, and similar matters and requests for repairs or adjustments.

The provisions of this Section shall be complied with if a grantee maintains an office which may be reached by a local toll-free telephone call on a twenty-four (24) hour basis, has a service technician in the Storm Lake area and provides the City Clerk's office with the name, address and phone number of a person in the City who will act as a grantee's agent to receive inquiries or complaints from subscribers during normal business hours.

(C) A grantee shall maintain a repair and maintenance crew capable of making an initial response to subscriber complaints or requests for service within eight (8) hours after receipt of the complaint or request. No charge shall be made to the subscriber for this service unless such maintenance or repair is required as a result of damage caused by subscriber. A grantee may charge for service calls to the subscriber's home that are not a result of cable failure upon approval of a rate and equitable procedure by the City Council.

(D) The grantee shall establish procedures for receiving, acting upon and resolving subscriber complaints to the satisfaction of the City Administrator's office. A grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system and annually thereafter.

(E) A grantee shall keep a maintenance service record which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. Such maintenance service record, or a printout thereof if such record is computerized, shall be made available upon request for inspection by representatives of the City Administrator's office. All service complaint entries shall be retained on file for a period consisting of the most recent two (2) years.

(F) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the City, casts doubt on the reliability or quality of cable service, the City shall have the right and authority to require a grantee to test, analyze and report on the performance of the system. A grantee shall fully cooperate with the City in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

1. The nature of the complaint or problem which precipitated the special tests.
2. What system component was tested.
3. The equipment used and procedures employed in testing.
4. The method, if any, in which such complaint or problem was resolved.
5. Any other information pertinent to said tests and analyses which may be required.

(G) The City Administrator may require that tests and analyses shall be supervised by a professional engineer with the requisite expertise in cable television operations and not a member of the staff of the grantee. The aforesaid engineer shall sign all records of the special tests and forward to the City Administrator such records with a report interpreting the results of the tests and recommending actions to be taken by a grantee and the City Administrator.

(H) The City Administrator's right under this Section, shall be limited to requiring tests, analyses and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the City Administrator has reasonable grounds to believe that the complaints or other evidence requires that tests be performed to protect the public against substandard

cable service.

Section 4-6-34 Rights Of Individuals

(A) A grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, or sex. A grantee shall comply at all times with all other applicable Federal, State and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Chapter by reference.

(B) A grantee shall strictly adhere to the equal employment opportunity requirements of Federal, State and local regulations and as amended from time to time.

(C) No signals shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such authorization is required for each type and classification of two-way cable communications activity planned; provided, however, that a grantee shall be entitled to conduct system wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return-path transmission, or billing for pay services.

(D) The grantee or any of its agents or employees shall not, without providing subscribers the opportunity to prohibit or restrict such disclosure, sell or otherwise make available to any party for any purpose other than as may be necessary for a grantee to conduct its business of providing the services to which such subscriptions have been made:

1. Lists of the names and addresses of such subscribers or;
2. Any list which identified the individual viewing habits of subscribers.

Section 4-6-35 Payment Of Franchise Fee

A grantee shall pay to the City during the period of its franchise a franchise fee in such amounts as may be provided for by the franchise ordinance. All franchise fees shall be based upon gross or net receipts received on a month-by-month basis, and shall be payable quarterly within thirty (30) days following the end of each calendar quarter of the year. A grantee shall provide to the City along with said payment a current count of the number of subscribers as of the billing cut-off date in the last month in the preceding calendar quarter.

In addition, within ninety (90) days after the completion of a grantee's fiscal year, the grantee shall provide to the City a certified statement of revenue by grantee's certified public accountants. A grantee shall also permit the City at any time to have independent certified public accountants audit a grantee's records to verify the accuracy of the certified statement of revenue, and if the independent audit should discover a discrepancy in the amount of the franchise fee payable to the City which is five percent (5%) or more in excess of the franchise fee documented by the certified statement of revenue from grantee's certified public accountants, the grantee shall reimburse the City for the costs of the independent audit.

Section 4-6-36 Injury To Property Of The Grantee

No person shall wrongfully or unlawfully injure the property of the grantee.

Section 4-6-37 Intercepting Signals Of The Grantee

No person shall wrongfully or unlawfully intercept the signals of the grantee.

Section 4-6-38 Penalty

Any person violating any of the provisions of Sections 4-6-36 or 4-6-37 of this Chapter shall, upon conviction, be subject to a fine of not to exceed one hundred dollars (\$100.00) or imprisonment not exceeding thirty (30) days.

Section 4-6-39 Filing Of Reports

On or before April 1 of each year, a grantee shall file with the City a copy of FCC Form 325 for the preceding calendar year.

Section 4-6-40 Filing Of Maps And Plats

On or before April 1 of each year, a grantee shall file with the City maps and plats showing the location and nature of all new property of the grantee within the City as of the end of the preceding calendar year.

Section 4-6-41 Access

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

Section 4-6-42 Discrimination Prohibited

A grantee shall not grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage with respect to rates, charges, services, service facilities, rules, regulations or in any other respect.

Section 4-6-43 Reservations

The right is reserved to the City Council or its successors or equivalent to adopt, in addition to the provisions contained herein, and in existing applicable ordinances, such additional regulations as it shall

find necessary in the exercise of the police power.